रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05

REGD. NO. D. L. (N) 04/0007/2003–05

भारत का राजपत्र
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सं. 37] नई दिल्ली, सितम्बर 9—सितम्बर 15, 2012, शनिवार/भाद्र 18—भाद्र 24, 1934
No. 37] NEW DELHI, SEPTEMBER 9—SEPTEMBER 15, 2012, SATURDAY/BHADRA 18—BHADRA 24, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 5 सितम्बर, 2012

का. आ. 2840.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप एतद्द्वारा अधिसूचित करती है :

पुलिस उप महानिरीक्षक का कार्यालय, रंगरूट-प्रशिक्षण-केन्द्र, केन्द्रीय रिर्जव पुलिस बल, राजगीर, बिहार ।

[फा. सं. 12017/1/2012-हिन्दी]
अवधेश कुमार मिश्र, निदेशक (राजभाषा)

MINISTRY OF HOME AFFAIRS

New Delhi, the 5th September, 2012

S. O. 2840.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Ministry of Home Affairs wherein the percentage of the staff having working knowledge of Hindi has gone above 80% :

Office of the Deputy Inspector General, Recruit Training Centre, CRPF, Rajgir, Bihar.

[F. No. 12017/1/2012-Hindi]
AVADHESH KUMAR MISHRA, Director (OL)

नई दिल्ली, 6 सितम्बर, 2012

का. आ. 2841.—केंद्रीय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1965 के नियम 9 के उप-नियम (2), नियम 12 के उप-नियम (2) के खण्ड (ख) तथा नियम 24 के उप-नियम (1) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रपति एतदद्वारा यह निदेश देते हैं कि अंडमान और निकोबार प्रशासन के अंतर्गत समूह ख पदों के संबंध में शास्तियां लगाने में सक्षम, नियुक्ति प्राधिकारी तथा अनुशासनिक प्राधिकारी और अपील प्राधिकारी वे होंगे जो इसके साथ संलग्न अनुसूची में यथा विनिर्दिष्ट हैं ।

अनुसूची

क्र.सं	पदों का विवरण	नियुक्ति प्राधिकारी	शास्तियां लगाने के संबंध में सक्षम प्राधिकारी तथा वे शास्तियां जो उनके द्वारा लगाई जा सकती हैं (नियम 11 में मद संख्याओं के संदर्भ में)		अपील प्राधिकारी
			प्राधिकारी	शास्ति	
(i)	सभी समूह ख राजपत्रित पद	प्रशासक (उप-राज्यपाल), अंडमान एवं निकोबार द्वीपसमूह	(क) प्रशासक (उप-राज्यपाल), अंडमान एवं निकोबार द्वीपसमूह	(क) सभी	(क) राष्ट्रपति
			(ख) मुख्य सचिव	(ख) (i) से (iv) तक	(ख) प्रशासक (उप-राज्यपाल), अंडमान एवं निकोबार द्वीपसमूह
(ii)	सभी समूह ख अराजपत्रित पद	मुख्य सचिव, अंडमान एंव निकोबार द्वीपसमूह प्रशासन	(क) मुख्य सचिव	(क) सभी	(क) प्रशासक (उप-राज्यपाल), अंडमान एवं निकोबार द्वीपसमूह
			(ख) प्रशासनिक सचिव	(ख) (i) से (iv) तक	(ख) मुख्य सचिव

[फा. सं. यू-14012/3/2010-ए.एन.एल.]

एम. एल. वर्मा, निदेशक (ए.एन.एल.)

New Delhi, the 6th September, 2012

S.O. 2841.— In exercise of the powers conferred under sub-rule (2) of Rule 9, Clause (b) of sub rule (2) of Rule 12 and sub-rule (1) of Rule 24 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the President hereby orders that the Appointing Authority and Disciplinary Authority competent to impose penalties in respect of Group B Posts under the Andaman and Nicobar Administration and the Appellate Authority shall be as specified in the Schedule annexed herewith.

SCHEDULE

Sl. No.	Description of posts	Appointing Authority	Authority competent to impose penalties and penalities which it may impose (with reference to item numbers in Rule 11)		Appellate Authority
			Authority	Penalties	
(i)	All Group B Gazetted Posts	Administrator (Lt. Governor), Andaman and Nicobar Islands	(a) Administrator (Lt. Governor), Andamana and Nicobar Islands	(a) All	(a) President
			(b) Chief Secretary	(b) (i) to (iv)	(b) Administrator (Lt. Governor), Andaman and Nicobar Islands
(ii)	All Group B Non-Gazetted Posts	Chief Secretary, Andaman and Nicobar Administration	(a) Chief Secretary	(a) All	(a) Administrator (Lt. Governor), Andaman and Nicobar Islands
			(b) Administrative Secretary	(b) (i) to (iv)	(b) Chief Secretary

[F. No. U-14012/3/2010-A.N.L.]

M. L. VARMA, Director (A.N.L.)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 6 सितम्बर, 2012

का. आ. 2842.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, नीचे दी गई सारणी के कालम 3 में विनिर्दिष्ट व्यक्तियों को उक्त सारणी के कालम 2 में विनिर्दिष्ट व्यक्तियों के स्थान पर कालम (1) में विनिर्दिष्ट राष्ट्रीकृत बैंकों के निदेशक के रूप में तत्काल प्रभाव से और अगले आदेश होने तक नामित करती है:—

(1)	(2)	(3)
पंजाब नैशनल बैंक	श्री जसबीर सिंह	श्री एन.एस. विश्वनाथन, क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, फोर्ट ग्लैसिस, 16, राजाजी सलाय, चेन्नै-600 001
यूको बैंक	श्रीमती उमा शंकर	श्री बी.पी. विजयेन्द्र, मुख्य महाप्रबंधक, भारतीय रिजर्व बैंक, करेंसी प्रबंधन विभाग, केन्द्रीय कार्यालय, अमर बिल्डिंग, फोर्ट, मुम्बई-400 001
देना बैंक	श्री एन.एस. विश्वनाथन	श्री वी. वसंथन, मुख्य महाप्रबंधक, भारतीय रिजर्व बैंक, फोर्ट ग्लैसिस, 16, राजाजी सलाय, चेन्नै-600 001
बैंक ऑफ इंडिया	श्री पी. के. पांडा	श्री पी. आर. रविमोहन, क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, होशंगाबाद रोड, भोपाल-462 011

[फा. सं. 6/3/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 6th September, 2012

S.O. 2842.— In exercise of the powers conferred by clause (c) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of The Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates the persons specified in column (3) of the table below as Directors of Nationalized Banks specified in column (1) thereof in place of the persons specifed in column (2) of said Table, with immediate effect and until further orders :—

Sl. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	(1)	(2)	(3)
1.	Punjab National Bank	Sh. Jasbir Singh	Sh. N.S. Viswanathan, Regional Director, Reserve Bank of India, Fort Glacis, 16, Rajaji Salai, Chennai-600 001
2.	UCO Bank	Smt. Uma Shankar	Sh. B.P. Vijayendra, Chief General Manager, Reserve Bank of India, Department of Currency Management, Central Office, Amar Building Fort, Mumbai-400 001

	(1)	(2)	(3)
3.	Dena Bank	Sh. N.S. Viswanathan	Sh. V. Vasanthan, Chief General Manager, Reserve Bank of India, Fort Glacis, 16, Rajaji Salai, Chennai-600 001
4.	Bank of India	Sh. P.K. Panda	Sh. P.R. Ravimohan Regional Director, Reserve Bank of India, Hosangabad Road, Bhopal-462 011

[F. No. 6/3/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 22 जून, 2012

का. आ. 2843.—इस मंत्रालय की दिनांक 25 मई, 2011 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 3 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार, श्री संतोक सिंह चौधरी को तत्काल प्रभाव से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक केंद्रीय फिल्म प्रमाणन बोर्ड के सदस्य के रूप में नियुक्त करती है ।

[फा. सं. 809/2/2010-एफ(सी)]

निरुपमा कोतरू, निदेशक (फिल्म)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 22nd June, 2012

S.O. 2843.—In continuation of this Ministry's Notification of even No. dated 25th May, 2011 and in exercise of the powers conferred by sub-section (1) of Section 3 of the Cinematograph Act, 1952 (37 of 1952) read with rule 3 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri Santokh Singh Chaudhery as member of the Central Board of Film Certification with immediate effect for a period of three years or until further orders.

[F. No. 809/2/2010-F(C)]

NIRUPAMA KOTRU, Director (Films)

नई दिल्ली, 22 जून, 2012

का. आ. 2844.—इस मंत्रालय की दिनांक 25 मई, 2011 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 3 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा यह अधिसूचित किया जाता है कि डॉ. राज कुमार वर्का अब केंद्रीय फिल्म प्रमाणन बोर्ड में अपनी सेवाएं प्रदान नहीं कर पाएंगे क्योंकि वे पंजाब विधान सभा के सदस्य चुन लिए गए हैं ।

[फा. सं. 809/2/2010-एफ(सी)]

निरुपमा कोतरू, निदेशक (फिल्म)

New Delhi, the 22nd June, 2012

S.O. 2844.—In continuation of this Ministry's Notification of even No. dated 25th May, 2011 and in exercise of the powers conferred by sub-section (1) of Section 3 of the Cinematograph Act, 1952 (37 of 1952) read with rule 3 of the Cinematograph (Certification) Rules, 1983, it is hereby notifed that Dr. Raj Kumar Verka shall no longer serve on the Board of Central Board of Film Certification, as he has been elected as a Member of the Punjab Legislative Assembly.

[F. No. 809/2/2010-F(C)]

NIRUPAMA KOTRU, Director (Films)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 3 सितम्बर, 2012

का. आ. 2845.—ऑरोविले प्रतिष्ठान अधिनियम, 1988 (1988 का 54) की धारा 12 के साथ पठित धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, एतद्द्वारा ऑरोविले प्रतिष्ठान के शासी बोर्ड के अध्यक्ष के रूप में डा. कर्ण सिंह (संसद

सदस्य, राज्य सभा) का कार्यकाल 29 अक्तूबर, 2012 तक विस्तारित करती है । डा. कर्ण सिंह मानद रूप में बोर्ड के अध्यक्ष के रूप में कार्य करेंगे ।

[सं. एफ. 27-9/2008-यूयू (भाग)]

वीना ईश, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 3rd September, 2012

S.O. 2845.—In exercise of the powers conferred by Section 11read with Section 12 of the Auroville Foundation Act, 1988 (54 of 1988), the Central Government hereby extends the tenure of Dr. Karan Singh (MP, Rajya Sabha) as Chairman of the Governing Board of Auroville Foundation up to 29th October, 2012. Dr. Karan Singh will function as Chairman of the Board in an honorary capacity.

[No. F. 27-9/2008-UU(Pt.)]

VEENA ISH, Jt. Secy.

विदेश मंत्रालय

(सीपीवी प्रभाग)

नई दिल्ली, 5 सितम्बर, 2012

का.आ. 2846.—राजनयिक और कांसलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार एतद्द्वारा श्री सेतकोलन, सहायक को 5 सितम्बर, 2012 से भारत के राजदूतावास जेगरेब में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है ।

[सं. टी. 4330/01/2006]

आर. के. पेरिनडिया, अवर सचिव (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 5th September, 2012

S.O. 2846.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorize Shri Satkholen Assistant Embassy of India, Zagreb to perform the duties of Assistant Consular Officer with effect from 5th September, 2012.

[No. T. 4330/01/2006]

R.K. PERINDIA, Under Secy. (Consular)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 5 सितम्बर, 2012

का. आ. 2847.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उप-नियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कॉर्पोरेशन, वार्ड नं. 8, प्लॉट नं. 17, दुर्गाचौक कालौनी मार्केट, पीएस : दुर्गाचौक, जिला मेदिनीपुर (पूर्व), हल्दिया-721 602 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975, तारीख 20 दिसम्बर, 1965 के साथ उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क, समूह-I अर्थात् लौह अयस्क और मैंगनीज अयस्क, मैंगनीज डॉयक्साइड को छोड़कर को निम्नलिखित शर्तों के अध्यधीन उक्त खनिजों और अयस्कों के निर्यात से पूर्व हल्दिया में निरीक्षण करने के लिए अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् :—

(i) मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कॉर्पोरेशन, वार्ड नं. 8, प्लॉट नं. 17, दुर्गाचौक कालौनी मार्केट, पीएस : दुर्गाचौक, जिला मेदिनीपुर (पूर्व), हल्दिया-721 602 खनिज और अयस्क समूह-I (निरीक्षण) के निर्यात नियम, 1965 के नियम 4 के अधीन निरीक्षण के क्रियान्वयन के लिए उनके द्वारा अनुसरित पद्धति की परीक्षा करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्देशित अधिकारियों को पर्याप्त सुविधाएं देगा; और

(ii) मैसर्स थैराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, वार्ड नं. 8, प्लॉट नं. 17, दुर्गाचौक कालौनी मार्केट, पीएस : दुर्गाचौक, जिला मेदिनीपुर (पूर्व), हल्दिया-721 602 इस अधिसूचना के अधीन अपने कृत्यों के अनुपालन में ऐसे निदेशों द्वारा आबद्ध होंगे, जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए जाएं ।

[फा. सं. 4/8/2012-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 5th September, 2012

S.O. 2847.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes, M/s. Therapeutics Chemical Research Corporation, Ward No. 8, Plot No. 17, Durgachawk Colony Market, PS : Durgachawk, District Medinipur (East), Haldia-721 602, as an Agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores Group-I, namely, Iron Ore and Manganese Ore excluding Manganese Dioxide, specified in the Schedule annexed to the Ministry of Commerce notification number S.O. 3975, dated the 20th December, 1965, prior to export of said minerals and ores at Haldia, subject to the following conditions, namely:—

(i) M/s. Therapeutics Chemical Research Corporation, Ward No. 8, Plot No. 17, Durgachawk Colony Market, PS : Durgachawk, District Medinipur (East), Haldia-721 602, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carring out inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965;

(ii) M/s. Therapeutics Chemical Research Corporation, Ward No. 8, Plot No. 17, Durgachawk Colony Market, PS: Durgachawk, District Medinipur (East), Haldia-721 602, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control) may give in writing from time to time.

[F. No. 4/8/2012-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2848 .—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 13730 (भाग 0, अनुभाग 3) : 2012/ आईईसी 60317-0-3 : 2008 विशेष प्रकार की कुंडलण तारों की विशिष्टि, भाग 0 सामान्य अपेक्षाएं अनुभाग 3 अनेमलित गोल एल्युमिनियम की तार (पहला पुनरीक्षण)	-	7-8-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : ईटी 33/टी-106]

आर. के. त्रेहन, वैज्ञानिक 'ई' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 7th August, 2012

S.O. 2848.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards to the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 13730 (Part 0/Sec 3) : 2012 / IEC 60317-0-3 : 2008 Specifications for Particular Types of Winding Wires Part 0 General Requirements, Sec 3 Enamelled Round Aluminium Wire (First Revision)	-	7-8-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 33/T-106]

R. K. TREHAN, Scientist 'E' & Head (Electro-technical)

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2849.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आईईसी 62056-46: 2007 विद्युत मीटरिंग-मीटर रीडिंग, शुल्क और लघु नियंत्रण के लिए आंकडों का विनिमय भाग 46 : एच डी एल सी प्रोटोकॉल प्रयुक्त आँकडा लिंक संस्तर	-	16-8-2012
	आई एस/आईईसी 62056-61: 2006 विद्युत मीटरिंग-मीटर रीडिंग, प्रभार और भार नियंत्रण के लिए आंकडों का विनिमय भाग 61 वस्तु पहचान पद्धति (ओ बी आई एस)	-	16-8-2012
	आई एस/आईईसी 62056-62: 2006 विद्युत मीटरिंग-मीटर रीडिंग, प्रभार और भार नियंत्रण के लिए आंकडों का आदान-प्रदान भाग 62 इन्टरफेस श्रेणियाँ	-	16-8-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ ईटी 13/टी-50, टी-51, टी-48]

आर. के. त्रेहन, वैज्ञानिक 'ई' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 16th August, 2012

S.O. 2849.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards to the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued : —

SCHEDULE

Sl.No.	No. and Year of the Indian Standards	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS/IEC 62056-46:2007 Electricity Metering-Data exchange for Meter reading tariff, and Load control-Part 46 : Data link layer using HDLC protocol		16-8-2012
	IS/IEC 62056-61: 2006 Electricity Metering-Data exchange for Meter reading tariff, and Load control- Part 61 Object Identification System (OBIS)	-	16-8-2012
	IS/IEC 62056-62 : 2006 Electricity Metering-Data exchange for Meter reading tariff, and Load control- Part 62 Interface Classes	-	16-8-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.—

[Ref ET-13/T-50, T-51, T-48]

R. K. TREHAN, Scientist 'E' & Head (Electro-technical)

नई दिल्ली, 28 अगस्त, 2012

का.आ. 2850.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो की संख्या और वर्ष?	स्थापित तिथि
1.	आई एस 13098: 2012 स्वचल वाहन-वायवीय टायरों के लिए ट्यूब-विशिष्टि (पहला पुनरीक्षण)	13098 : 1991	25 सितम्बर, 2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टी ई डी/जी-16]

पी. सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 28th August, 2012

S.O. 2850.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl.No.	No. year and title of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 13098:2012 Automotive vehicles -Tubes for pneumatic types -Specification (First Revision)	13098: 1991	25 Sep. 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delh-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TED/G-16]

P. C. JOSHI, Scientist 'F' & Head (Transport Engg.)

नई दिल्ली, 28 अगस्त, 2012

का. आ. 2851.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं ।

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3825669	26-4-2012	मैसर्स गायकवाड बेवरेजेज गट सं 105, चांदखेड तालुका मावल जिला पुणे महाराष्ट्र-410506	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
2.	3816567	1-5-2012	मैसर्स मनीषा फूड एंड बेहवरेजेज प्लाट नं. 31, 32 चंद्रमौली औद्योगिक वसाहत मर. मोहोल जिला सोलापुर महाराष्ट्र-413213	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
3.	3792983	3-5-2012	मैसर्स के. आर. एटरप्राइजेज गट सं. 25 देहू मोशी रोड पाटिल नगर चिखली तालुका हवेली जिला पुणे महाराष्ट्र-412114	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	3823968	4-5-2012	मैसर्स हेगर इलेक्ट्रो प्रा. लि. गट सं. 19/23 नेक्स्ट टू एमएसईबी ट्रांसफार्मर यार्ड, फुलगांव रोड गांव वाधू (खुर्द) लोनीकंद, तालुका हवेली जिला पुणे महाराष्ट्र-412 216	अपशिष्ट धारा प्रचालित पथ-वियोजन घरेलू और सामान्य प्रयोगों के लिए भाग-1 : पथ वियोजन बिना समाकलित अधिधारा संरक्षण (आरसीसीबीएस)	12640	01		2008
5.	3756575	26-4-2012	मैसर्स मार्शल सर्विस स. नं. 91/1ए, मुंढवा तालुका हवेली जिला पुणे महाराष्ट्र-411 009	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
6.	3831664	7-5-2012	मैसर्स सिद्धार्थ वर्ल्ड ट्रेड प्रा. लि. प्लॉट नं. 1ई, सेक्टर-1, फेज-III पर्वती को-ऑपरेटिव इंडस्ट्रीयल इस्टेट, याद्रव तालुका शिरोल जिला कोल्हापुर महाराष्ट्र-416145	मलाई निकाला हुआ दूध पावडर - विशिष्ट -भाग 1 : मानक श्रेणी	13334	01		1998
7.	3835066	23-5-2012	मैसर्स अर्चना प्लास्टिक्स 71, इंडस्ट्रीयल इस्टेट-2 बारशी, तालुका बारशी जिला सोलापुर महाराष्ट्र-431401	पेय जल आपूर्ति के लिए अप्लास्टिकृत पीवीसी पाइप्स-विशिष्टि	4985			2000
8.	3835874	25-5-2012	मैसर्स गोविंद मिल्क एंड मिल्क प्रॉडक्ट्स प्रा.लि. प्लॉट नं. 93, 94, 95 गणेशशेरी, कोलकी तालुका फलटन जिला सातारा महाराष्ट्र-415 523	दूध पाउडर	1165			2002
9.	3784984	25-5-2012	मैसर्स ज़कास फूड्स एंड बेवरेजेज सं नं. 174/1, बेबदेवल तालुका मावल जिला पुणे महाराष्ट्र-410 506	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004

[सं. सी एम डी/13:11]

एन. डी. देशमुख, वैज्ञानिक-'एफ'

New Delhi, the 28th August, 2012

S.O. 2851.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:—

SCHEDULE

Sl.No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
(1)	(20	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3825669	26-4-2012	M/s. Gaikwad Beverages Gat No. 105 Chandkhed Taluka Maval District Pune Maharashtra -410506	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
2.	3816567	1-5-2012	M/s. Manisha Food and Behaverages Plot No. 31, 32 Chandramoouli Audyogik Vasahat Mary, Mohol District Solapur Maharashtra-413213	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
3.	3792983	3-5-2012	M/s. K.R. Enterprises Gat No. 25 Dehu Moshi Road Patil Nagar Chikhali Taluka Haveli District Pune Maharashtra-412114	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
4.	3823968	4-5-2012	M/s. Hager Electro Pvt. Ltd. Gat No. 19/23 Next To MSEB Transformer Yard Phulgaon Road Village Vadhu (Kh) Lonikand Taluka Haveli District Pune Maharashtra-412216	Residual Current Operated Circuit-Breakers for Household and Similar Uses-Part 1 : Circuit-Breakers Without Integral Overcurrent Protection (Rccbs)	12640	01		2008
5.	3756575	26-4-2012	M/s. Marshall Service S. No. 91/1A Mundhwa Taluka Haveli District Pune Maharashtra-411009	Packaged Drinking Water (Other Than Packaged Natural Mineral Water)	14543			2004
6.	3831664	7-5-2012	M/s. Siddharth World Trade Pvt. Ltd. Plot No. 1E, Sector I, Phase-III Parvati Co-Operative Industrial Estate Yadrav Taluka Shirol District Kolhapur Maharashtra-416145	Skimmed Milk Powder Specification-Part I : Standard Grade	13334	01		1998

(1)	(20	(3)	(4)	(5)	(6)	(7)	(8)	(9)
7.	3835066	23-5-2012	M/s. Archana Plastics 71, Industrial Estate-2 Barshi Taluka Barshi District Solapur Maharashtra-431401	Unplasticized PVC Pipes for Potable Water Supplies-Specification	4985			2000
8.	3835874	25-5-2012	M/s. Govind Milk & Milk Products Pvt Ltd. Plot No. 93, 94, 95 Ganeshsheri Kolki Taluka Phaltan District Satara Maharashtra-415523	Milk Powder	1165			2002
9.	3784984	25-5-2012	M/s. Zakas Foods & Beverages Sr. No.174/1 Bebedoual Taluka Maval District Pune Maharashtra-410506	Packaged Drinking Water (Other Than Packaged Natural Mineral Water)	14543			2004

[No. CMD/13:11]

N. D. DESHMUKH, Scientist -'F'

नई दिल्ली, 29 अगस्त, 2012

का.आ. 2852.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के संशोधन के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:–

अनुसूची

क्रम सं.	संशोधित भारतीय मानक की संख्या वर्ष और शीर्षक	संशोधन संख्या और वर्ष	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 4674 : 1975 ड्रैस्ड चिकन के लिए विशिष्टि (पहला पुनरीक्षण)	संशोधन संख्या 2 वर्ष 2012	31 अगस्त 2012
2.	आईएस 12541 : 1988 मांस एवं मांस उत्पाद - कुक्कुट-चिकन करी, डिब्बाबंद - विशिष्टि	संशोधन संख्या 2 वर्ष 2012	31 अगस्त 2012

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एफएडी/जी-128]

डा. आर के. बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

New Delhi, the 29th August, 2012

S.O. 2852.—In pursuance of clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendments, to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl.No.	No. and year of the Indian Standards	No. and year of the Amendment	Date of which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 4674 : 1975 Specification for Dressed Chicken (First Revision)	Amendment No. 2 Year 2012	31 August 2012
2.	IS 12541 : 1988 Meat and Meat Products— Poultry— Chicken Curry, Canned — Specification	Amendment No. 2 Year 2012	31 August 2012

Copy of thess Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. FAD/G-128]

Dr. R. K. BAJAJ, Scientist 'F' & Head (Food & Agri.)

नई दिल्ली, 30 अगस्त, 2012

का.आ. 2853.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए है :–

अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1586 (Pt 3) : 2012/आई एस ओ 6508-3 : 2005 धात्विक सामग्री – रॉकवेल कठोरता परीक्षण भाग 3 संदर्भ ब्लॉक का अंशशोधन (स्केल A, B, C, D, E, F, G, H, K, N, T) (चौथा पुनरीक्षण)	आई एस 1586 : 2000	31-07-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 3/टी-125]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 30th August, 2012

S.O. 2853.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl.No.	No. and Year of the Indian Standard Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 1586 (Pt 3) : 2012/ISO 6508-3 : 2005 Metallic materials — Rockwell Hardness Test Part 3 Calibration of Reference Blocks (Scales A, B, C, D, E, F, G, H, K, N, T) (Fourth Revision)	IS 1586 : 2000	31-07-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 3/T-125]

P. GHOSH, Scientist 'F' & Head (MTD)

नई दिल्ली, 30 अगस्त, 2012

का.आ. 2854.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए है :–

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 10175 : 2012/आई एस ओ 20482 : 2003 धात्विक सामग्रियाँ – चद्दर एवं पत्ती – इरिक्सन कॉपिंग परीक्षण (दूसरा पुनरीक्षण)	आई एस 10175 (भाग 1) : 1993 आई एस ओ 8490 : 1986	31-07-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 3/टी-127]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 30th August, 2012

S.O. 2854.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 10175 : 2012/ISO 20482 : 2003 Metallic materials — Sheet and Strip — Erichsen Cupping Test (Second Revision)	IS 10175 (Part 1) : 1993 ISO 8490 : 1986	31-07-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 3/T-127]

P. GHOSH, Scientist 'F' & Head (MTD)

नई दिल्ली, 30 अगस्त, 2012

का.आ. 2855.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :–

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1586 (Pt 1) : 2012/आई एस ओ 6508-1 : 2005 धात्विक सामग्री – रॉकवेल कठोरता परीक्षण भाग 1 परीक्षण पद्धति (स्केल A, B, C, D, E, F, G, H, K, N, T) (चौथा पुनरीक्षण)	आई एस 1586 : 2000	31-07-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 3/टी-126]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 30th August, 2012

S.O. 2855 .—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl.No.	No. and Year of the Indian Standard Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 1586 (Pt 1) : 2012/ISO 6508-1 : 2005 Metallic materials — Rockwell Hardness Test Part 1 Test Method (Scales A, B, C, D, E, F, G, H, K, N, T) (Fourth Revision)	IS 1586 : 2000	31-7-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 3/T-126]

P. GHOSH, Scientist 'F' & Head (MTD)

नई दिल्ली, 30 अगस्त, 2012

का.आ. 2856.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए है :-

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1586 (Pt 2) : 2012 आई एस ओ 6508-2 : 2005 धात्विक सामग्री – रॉकवेल कठोरता परीक्षण भाग 2 परीक्षण मशीनों का सत्यापन एवं अंशशोधन (स्केल A, B, C, D, E, F, G, H, K, N, T) (चौथा पुनरीक्षण)	आई एस 1586 : 2000	31-08-2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 3/टी-124]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 30th August, 2012

S.O. 2856.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :—

SCHEDULE

Sl.No.	No. and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 1586 (Pt 2) : 2012/ISO 6508-2 : 2005 Metallic materials — Rockwell Hardness Test Part 2 Verification and Calibration of Testing Machines (Scales A, B, C, D, E, F, G, H, K, N, T) (Fourth Revision)	IS 1586 : 2000	31-8-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 3/T-124]

P. GHOSH, Scientist 'F' & Head (MTD)

कोयला मंत्रालय

नई दिल्ली, 12 सितम्बर, 2012

का.आ. 2857.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) के अधीन जारी की गई भारत सरकार में कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 3054 तारीख 15 दिसम्बर, 2010 जो भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii) तारीख 18 दिसम्बर, 2010 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 3635.538 हेक्टर (लगभग) या 8983.41 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी ;

और केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से उपाबद्ध अनुसूची में विहित भूमियों के एक भाग में कोयला अभिप्राप्य है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 809.508 हेक्टर (लगभग) या 2000.29 एकड़ (लगभग) माप की उक्त भूमि का अर्जन करने के अपने आशय की सूचना देती है ।

टिप्पण 1 :–इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्यांक एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/427 तारीख 28 मई, 2012 का निरीक्षण कलक्टर, जिला-रायगढ़ (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, (राजस्व अनुभाग) सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

टिप्पण 2 :–उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध हैं :–

अर्जन के बाबत आपत्तियां :

"8(1) कोई भी व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा ।

स्पष्टीकरण :—

(1) इस धारा के अर्थांतर्गत यह आपत्ति नहीं मानी जाएगी, कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन क्रियाएं करना चाहता है और ऐसी क्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए ।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी आपत्तिकर्ता को स्वयं सुने जाने, विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच, यदि कोई हो, करने के पश्चात् जो वह आवश्यक समझता है, वह या तो धारा 7 की उप-धारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़े या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए, वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि भूमि या ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं ।"

टिप्पण 3 : केन्द्रीय सरकार ने, कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700 001 को उक्त अधिनियम के अधीन भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii) तारीख 4 मार्च, 1987 में प्रकाशित अधिसूचना सं. का.आ. 905, तारीख 20 मार्च, 1987 द्वारा सक्षम प्राधिकारी नियुक्त किया है ।

अनुसूची

छाल ओपनकास्ट विस्तार खान ब्लॉक,

रायगढ़ क्षेत्र, जिला-रायगढ़ (छत्तीसगढ़)

[रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/427 तारीख 28 मई, 2012]

सभी अधिकार :

(क) राजस्व भूमि :

क्रम सं.	ग्राम का नाम	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1	2	3	4	5	6	7
1.	चंद्रशेखरपुर	31	धरमजयगढ़	रायगढ़	114.778	भाग
2.	नवापारा	31	धरमजयगढ़	रायगढ़	33.183	भाग
3.	छाल	30	धरमजयगढ़	रायगढ़	120.004	भाग
4.	खेदापाली	31	धरमजयगढ़	रायगढ़	108.513	भाग
5.	बंधापाली	30	धरमजयगढ़	रायगढ़	235.163	भाग
6.	पुसल्दा	31	धरमजयगढ़	रायगढ़	12.712	भाग

कुल : 624.353 हेक्टर (लगभग)

या 1542.77 एकड़ (लगभग)

(ख) राजस्व वन भूमि (छोटा जंगल झाड़ी और बड़ा जंगल झाड़ी) (सीजेजे/बीजेजे):

क्रम सं.	ग्राम का नाम	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	खेदापाली	31	धरमजयगढ़	रायगढ़	8.445	भाग

कुल : 8.445 हेक्टर (लगभग)

या 20.87 एकड़ (लगभग)

(ग) वन भूमि :

क्रम सं.	वन का नाम	वन का प्रकार	रेंज	प्रभाग	क्षेत्र हेक्टर में	टिप्पणियां
1.	लात(1115/478)	पीएफ	छाल	धरमजयगढ़	176.710	पूर्ण
				कुल :–176.710 हेक्टर (लगभग) या 436.65 एकड़ (लगभग)		

कुल योग (क+ख+ग):– 809.508 हेक्टर (लगभग)
या 2000.29 एकड़ (लगभग)

1. ग्राम चंद्रशेखरपुर (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 2 से 80, 82, 90 से 105, 106/1, 107/9, 108 से 119, 134, 138, 140 से 142, 147, 148, 150, 151/2, 152(भाग), 153(भाग), 154, 159, 265(भाग), 266(भाग), 267 से 271, 272(भाग), 275 से 285, 287, 395, 428.
2. ग्राम नवापारा (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 441 से 452, 466 से 523.
3. ग्राम छाल (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 1031 से 1038, 1061 से 1064, 1071, से 1097, 1120 से 1130, 1278, 1288 से 1319, 1321 से 1354, 1356 से 1359, 1364, 1365, 1367 से 1416.
4. ग्राम खेदापाली (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 1 से 41, 44(भाग), 63, 78, 79 से 108, 130, 2/134.
5. ग्राम बंधापाली (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 1 से 24, 33 से 40, 46 से 77, 84 से 87, 107, 110 से 127, 142, 162 से 412.
6. ग्राम पुसल्दा (भाग) में अर्जित किए जाने वाले प्लॉट संख्या:– 1 से 4, 5(भाग), 7(भाग), 10, 13, 936.

सीमा वर्णन :

ब्लाक - I :

क-ख : रेखा बिन्दु ''क'' से प्रारंभ होती है और ग्राम लात-बंधापाली की सम्मिलित सीमा से होती हुई जाती है बिन्दु ''ख'' पर मिलती है ।

ख-ग : रेखा ''ख'' बिन्दु से आरंभ होती है और संरक्षित वन की उत्तरी, पश्चिमी और दक्षिणी सीमा तथा ग्राम लात-चंद्रशेखरपुर के भागत: सम्मिलित सीमा से होती हुई जाती है और बिन्दु ''ग'' पर मिलती है ।

ग-घ : रेखा ''ग'' बिन्दु से आरंभ होती है और ग्राम चंद्रशेखरपुर की प्लॉट संख्यांक 147, 148 की पश्चिमी सीमा, 148 की दक्षिणी सीमा, 150/1क की पूर्वी सीमा, 269/2, 268, 267/2 की पश्चिमी सीमा, 152/1क की उत्तरी सीमा, 153/1, 154 की दक्षिणी सीमा, 154 की पश्चिमी सीमा, 152/1क की दक्षिणी सीमा, 269/2, 268, 267/2, 256/2ग की पूर्वी सीमा, 269/1क, 279 की दक्षिणी सीमा, 279, 281/1, 266/1ख, 281/2 की पश्चिमी सीमा, 281/2, 287/1, 287/2 के दक्षिणी सीमा, 287/2, 285, 284/2, 284/1 की पूर्वी सीमा, 280-283, 275 की दक्षिणी सीमा, 272/1ग की पूर्वी सीमा से होकर ग्राम खेदापाली-चंद्रशेखरपुर की भागत: सम्मिलित सीमा से होती हुई जाती है और बिन्दु ''घ'' पर मिलती है ।

घ-ड. : रेखा ''घ'' बिन्दु से आरंभ होती है और ग्राम खेदापाली की प्लॉट संख्यांक 130/2ग, 108/1ख, 108/1क, 108/1घ,108/1झ 108/1थ, 108/1त की पूर्वी सीमा, 79/2 के दक्षिणी सीमा, 79/1च की पूर्वी सीमा, 79/1क, 79/1ज, 78 की दक्षिणी सीमा, 78, 25/1, 25/2क, 36/3 की पूर्वी सीमा, 63, 36/4च, 36/4क, 36/4ख की दक्षिणी सीमा, प्लॉट संख्यांक 37, 38, 41 की पूर्वी सीमा 44/2ख, 44/2क की दक्षिणी सीमा से होती हुई जाती है और ग्राम खेदापाली-बंधापाली के सम्मिलित सीमा में बिन्दु ''ड.'' पर मिलती है ।

ड.-च : रेखा ''ड.'' बिन्दु से आरंभ होती है और ग्राम बंधापाली-पुसल्दा की भागत: सम्मिलित सीमा से होकर जाती है फिर ग्राम पुसल्दा की प्लॉट संख्यांक 13, 10/4, 10/1, 7/2, 2/2, 2/3, 2/1ख, 934, 936/2 की दक्षिणी सीमा, 936/2, 936/1, 5/2, 5/1, 4/3 की पूर्वी सीमा से होती हुई जाती है और ग्राम नवापारा-पुसल्दा की सम्मिलित सीमा में बिन्दु ''च'' पर मिलती है ।

च-छ : रेखा ''च'' बिन्दु से आरंभ होती है और ग्राम नवापारा-पुसल्दा की भागत: सम्मिलित सीमा से होकर होते हुए जाती है फिर ग्राम नवापारा की प्लॉट संख्याक 443, 442, 441, 449, 450, 451, 452, 515, 493, 466/5, 466/6, 466/7, 466/4 की उत्तरी सीमा से गुजरती हुई जाती है और ग्राम नवापारा-बंधापाली के सम्मिलित सीमा में बिन्दु ''छ'' पर मिलती है ।

छ-ज : रेखा "छ" बिन्दु से आरंभ होती है और ग्राम नवापारा-बंधापाली की भागत: सम्मिलित सीमा से होते हुए जाती है फिर ग्राम बंधापाली के प्लॉट संख्यांक 182, 164, 163, 162, 142, 127, 112, 110, 107, 87/1, 84/2, 76 के उत्तरी सीमा, प्लॉट संख्यांक 52 के पश्चिमी, प्लॉट संख्याक 51, 46, 47, 40, 39 उत्तरी सीमा, प्लॉट संख्यांक 36/1, 37, 34, 33, 21 की पूर्वी सीमा से होती हुई बिन्दु "ज" पर मिलती है ।

ज-झ : रेखा "ज" बिन्दु से आरंभ होती है और ग्राम बंधापाली की भागत: उत्तरी सीमा से होते हुए जाती है फिर ग्राम छाल के प्लॉट संख्यांक 1278, 1337, 1336, 1335, 1334, 1333, 1332 की उत्तरी सीमा, प्लॉट संख्याक 1321, 1319 की पूर्वी सीमा प्लॉट संख्यांक 1319, 1318, 1288, 1290, 1289, 1128, 1129, 1130, 1126, 1124, 1123, 1122 की उत्तरी सीमा, 1122, 1121 की पूर्वी सीमा प्लॉट संख्याक 1097, 1096, 1095, 1071, 1072, 1064 की उत्तरी सीमा, प्लॉट संख्याक 1061, 1062, 1038, 1036, 1035, 1034, 1031, 1076, 1077, 1078, 1019 की पश्चिमी सीमा से होती हुई जाती है और बिन्दु "झ" पर मिलती है ।

झ-क : रेखा "झ" बिन्दु से आरंभ होती है और ग्राम छाल-लात की भागत: सम्मिलित सीमा से होते हुए जाती है फिर ग्राम छाल के प्लॉट संख्यांक 1354, 1356 की पूर्वी सीमा प्लॉट संख्याक 1359, 1364/4, 1364/5, 1402 की दक्षिणी सीमा, लॉट संख्यांक 1395, 1367, 1368, 1376/3, 1375/1 के पश्चिमी सीमा और ग्राम छाल-लात, लात-बंधापाली के भागत: सम्मिलित सीमा से होती हुई जाती है और आरंभिक बिन्दु "क" पर मिलती है ।

ब्लाक - II:

ञ-ट : रेखा ग्राम चंद्रशेखरपुर-लात के सम्मिलित सीमा में बिन्दु "ञ" से प्रारंभ होती है और ग्राम चंद्रशेखरपुर-लात के भागत: सम्मिलित सीमा से होती हुई जाती है और बिन्दु "ट" पर मिलती है ।

ट-ठ : रेखा "ट" बिन्दु से आरंभ होती है और मांड नदी के उत्तरी किनारे से गुजरती हुई जाती है और बिन्दु "ठ" पर मिलती है ।

ठ-ड : रेखा "ठ" बिन्दु से आरंभ होती है और ग्राम चंद्रशेखरपुर के प्लॉट संख्यांक 82, 90, 92/3, 118, 134, 116, 141/4 के पूर्वी सीमा, प्लॉट संख्यांक 138 की दक्षिणी सीमा से होती हुई जाती है और बिन्दु "ड" पर मिलती है ।

ड-ञ : रेखा "ड" बिन्दु से आरंभ होती है और ग्राम चंद्रशेखरपुर के प्लॉट संख्यांक 138, 139, 142/1, 141/3, 107/2, 111/1, 106/1 के पूर्वी सीमा से होती हुई जाती है और आरंभिक बिन्दु "ञ" पर मिलती है ।

[फा. सं. 43015/19/2010-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

MINISTRY OF COAL

New Delhi, the 12th September, 2012

S.O. 2857.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 3054 dated 15th December, 2010 issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 18th December, 2010 the Central Government gave notice of its intention to prospect for coal in 3635.538 hectares (approximately) or 8983.41 acres (approximately) of the lands in the locality specified in the schedule annexed to that notification;

And whereas the Central Government is satisfied that coal is obtainable in a part of the said lands prescribed in the Schedule appended to this notification ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 809.508 hectares (approximately) or 2000.29 acres (approximately) as all rights in or over the said lands described in the schedule appended hereto :

Note 1 : The plan bearing number SECL/BSP/GM(PLG)/LAND/427 dated 28th May, 2012 of the area covered by this notification may be inspected in the office of the Collector, Raigarh (Chhattisgarh) or in the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or in the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

Note 2 : Attention is hereby invited to the provisions of Section 8 of the said Act which provides as follows:—

Objection to Acquisition:

"8 (1) Any person interested in any land in respect of which a notification under Section 7 has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or of any part of the land or any rights in or over such land.

Explanation :—

(1) It shall not be an objection within the meaning of this Section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

(3) For the purposes of this Section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act."

Note 3: The Coal Controller, 1, Council House Street, Kolkata - 700001 has been appointed by the Central Government as the Competent Authority under Section 3 of the said Act vide notification number S.O. 905, dated the 20th March, 1987, published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 4th April, 1987.

SCHEDULE

Chhal Opencast Expansion Mine Block

Raigarh Area, District-Raigarh (Chhattisgarh)

[plan bearing number SECL/BSP/GM(PLG)/LAND/427 dated 28th May, 2012]

All Rights :

(A) Revenue Land :

Sl. No.	Name of Village	Patwari halka number	Tahsil	District	Area in hectares	Remarks
1.	Chandrashekharpur	31	Dharamjaigarh	Raigarh	114.778	Part
2.	Nawapara	31	Dharamjaigarh	Raigarh	33.183	Part
3.	Chhal	30	Dharamjaigarh	Raigarh	120.004	Part
4.	Khedapali	31	Dharamjaigarh	Raigarh	108.513	Part
5.	Bandhapali	30	Dharamjaigarh	Raigarh	235.163	Part
6.	Pusalda	31	Dharamjaigarh	Raigarh	12.712	Part

Total: 624.353 hectares (approximately) or 1542.77 acres (approximately).

(B) Revenue Forest Land (Chhoti Jangal Jhhari and Badi Jangal Jhhari) (CJJ & BJJ) :

Sl. No.	Name of Village	Patwari halka number	Tahsil	District	Area in hectares	Remarks
1.	Khedapali	31	Dharamjaigarh	Raigarh	8.445	Part

Total: 8.445 hectares (approximately) or 20.87 acres (approximately).

(C) Forest Land :

Sl. No.	Name of Forest	Type of Forest	Range	Division	Area in hectares	Remarks
1.	Lat (1115/478)	PF	Chhal	Dharamjaigarh	176.710	Full

Total: 176.710 hectares (approximately) or 436.65 acres (approximately).

Grand Total (A+B+C) = 809.508 hectares (approximately)

or 2000.29 acres (approximately)

1. **Plot numbers to be acquired** in village Chandrashekharpur (Part):—2 to 80, 82,90 to 105, 106/1, 107/9, 108 to 119, 134, 138, 140 to 142, 147, 148, 150, 151/2, 152(P), 153(P), 154, 159, 265(P), 266(P), 267 to 271, 272(P), 275 to 285, 287, 395, 428 .
2. **Plot numbers to be acquired** in village Nawapara (Part):—441 to 452, 466 to 523.
3. **Plot numbers to be acquired** in village Chhal (Part):—1031 to 1038, 1061 to 1064, 1071 to 1097, 1120 to 1130, 1278, 1288 to 1319, 1321 to 1354, 1356 to 1359, 1364, 1365, 1367 to 1416.
4. **Plot numbers to be acquired** in village Khedapali (Part):—1 to 41, 44(P), 63, 78, 79 to 108, 130, 2/134.
5. **Plot numbers to be acquired** in village Bandhapali (Part):—1 to 24, 33 to 40, 46 to 77, 84 to 87, 107, 110 to 127, 142, 162 to 412.
6. **Plot numbers to be acquired** in village Pusalda (Part):—1 to 4, 5(P), 7(P), 10, 13, 936.

Boundary Description :

Block-I:

A-B : Line starts from point 'A' and passes along the common boundary of villages Lat -Bandhapali and meets at point 'B'.

B-C : Line starts from point 'B' and passes along northern, western and southern boundary of Protected Forest, along partly common boundary of villages Lat-Chandrashekharpur and meets at point 'C'.

C-D : Line starts from point 'C' and passes through village Chandrashekharpur along the western boundary of plot number 147, 148, southern boundary of plot number 148, eastern boundary of plot number 150/1k, western boundary of plot numbers 269/2, 268, 267/2, northern and western boundary of plot number 152/1k, southern boundary of plot numbers 153/1, 154, western boundary of plot number 154, southern boundary of plot number 152/1k, eastern boundary of plot numbers 269/2, 268, 267/2, 256/2g, southern boundary of plot numbers 269/1 k, 279, western boundary of plot numbers 279, 281/1, 266/1 kh, 281/2, southern boundary of plot numbers 281/2, 287/1, 287/2, eastern boundary of plot numbers 287/2, 285, 284/2, 284/1, southern boundary of plot numbers 280-283, 275, eastern boundary of plot number 272/1 g, passes along the partly common boundary of villages Chandrashekharpur - Khedapali and meets at point 'D'.

D-E : Line starts from point 'D' and passes through village Khedapali along the eastern boundary of plot numbers 130/2g, 108/1kh, 108/1k, 108/1gh, 108/1jh, 108/1th, 108/1t, southern boundary of plot number 79/2, eastern boundary of plot number 79/1ch, southern boundary of plot numbers 79/1 k, 79/1j, 78, eastern boundary of plot numbers 78, 25/1, 25/2k, 36/3, southern boundary of plot numbers 63, 36/4ch, 36/4k, 36/4kh, eastern boundary of plot numbers 37, 38, 41, southern boundary of plot numbers 44/2kh, 44/2k and meets at point 'E' on the common boundary of villages Khedapali-Bandhapali.

E-F : Line starts from point 'E' and passes along partly common boundary of villages Bandhapali-Pusalda, then passes through village Pusalda along southern boundary of plot numbers 13, 10/4, 10/1, 7/2, 2/2, 2/3, 2/1 kh, 934, 936/2, eastern boundary of plot numbers 936/2, 936/1, 5/2, 5/1, 4/3 and meets at point 'F' on the common boundary of villages Nawapara-Pusalda.

F-G : Line starts from point 'F' and passes along the partly common boundary of villages Nawapara -Pusalda, then passes through village Nawapara along northern boundary of plot numbers 443, 442, 441, 449, 450,

451, 452, 515, 493, 466/5, 466/6, 466/7, 466/4 and meets at point 'G' on the common boundary of villages Bandhapali-Nawapara.

G-H: Line starts from point 'G' and passes along the partly common boundary of villages Nawapara- Bandhapali, then passes through village Bandhapali along northern boundary of plot numbers 182, 164, 163, 162, 142, 127, 112, 110, 107, 87/1, 84/2, 76, western boundary of plot number 52, northern boundary of plot numbers 51, 46, 47, 40, 39, eastern boundary of plot numbers 36/1, 37, 34, 33, 21 and meets at point 'H'.

H-I: Line starts from point 'H' and passes along the partly northern boundary of village Bandhapali, then passes in village Chhal along northern boundary of plot numbers 1278, 1337, 1336, 1335, 1334, 1333, 1332, eastern boundary of plot numbers 1321, 1319, northern boundary of plot numbers 1319,1318,1288,1290,1289,1128,1129,1130,1126,1124, 1123, 1122, eastern boundary of plot numbers 1122, 1121, northern boundary of plot numbers 1097, 1096, 1095, 1071, 1072, 1064; western boundary of plot numbers 1061, 1062, 1038, 1036, 1035, 1034, 1031, 1076, 1077, 1078, 1019 and meets at point 'I'.

I-A: Line starts from point 'I' and passes along the partly common boundary of villages Chhal -Lat, then passes through village Chhal along eastern boundary of plot numbers 1354, 1356, southern boundary of plot numbers 1359,1364/4, 1364/5, 1402, western boundary of plot numbers 1395, 1367, 1368, 1376/3, 1375/1, along partly common boundary of villages Chhal-Lat , Lat-Bandhapali and meets at starting point 'A'.

Block-II:

J-K: Line starts from point "J" on the common boundary of villages Lat-Chandrashekharpur and passes along the partly common boundary of villages Lat-Chandrashekharpur and meets at point 'K'.

K-L: Line starts from point"K" and passes along the northern bank of Mand River and meets at point 'L' on the same bank.

L-M: Line starts from point "L" and passes through village Chandrashekharpur along eastern boundary of plot numbers 82, 90, 92/3, 118, 134,116,141/4, southern boundary of plot number 138 and meets at point 'M'.

M-J: Line starts from point "M" and passes through village Chandrashekharpur along eastern boundary of plot numbers 138, 139, 142/1, 141/3, 107/2, 111/1, 106/1 and meets at starting point 'J'.

[F. No. 43015/19/2010-PRIW-I]

A. K. DAS, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 6 सितम्बर, 2012

का.आ. 2858.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाईपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की नीचे दी गई अधिसूची में यथा उल्लिखित तारीखों की संख्या का. आ. द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया था ।

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमियों में, सभी विल्लंगमों से मुक्त उपयोग का अधिकार एच.पी.सी.एल.-मित्तल पाईपलाईन्स लिमिटेड में निहित किया गया था ।

और सक्षम प्राधिकारी ने, केन्द्रीय सरकार को रिपोर्ट दी है कि गुजरात राज्य में मुंद्रा से भटिण्डा क्रूड ऑयल पाईपलाईन बिछाई जा चुकी है, अत: उस भूमि के बारे में, जिसका संक्षिप्त विवरण इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट किया गया है, ऐसे प्रचालन को गुजरात राज्य में समाप्त किया जाए ;

अत:, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाईपलाईन (भूमि में उपयोग के अधिकार का अर्जन) नियम, 1963 के नियम 4 के स्पष्टीकरण-I के अधीन अपेक्षानुसार उक्त अनुसूची के स्तंभ 6 में उल्लिखित तारीखों को जिला बनासकांठा, गुजरात राज्य में प्रचालन की समाप्ति की तारीख के रूप में घोषित करती है ।

अनुसूची

का. आ. सं. व दिनांक	गांव का नाम	तालुका	जिला	राज्य	प्रचालन समाप्ति की तारीख
1	2	3	4	5	6
871 दिनांक 12-03-2003,	खिमत	धानेरा	बनासकांठा	गुजरात	30-11-2009
755 दिनांक 24-03-2004,	रवि	धानेरा	बनासकांठा	गुजरात	30-11-2009
	वासदा	धानेरा	बनासकांठा	गुजरात	30-11-2009
	मांडल	धानेरा	बनासकांठा	गुजरात	30-11-2009
	रामपुरा (बांघपुरा)	धानेरा	बनासकांठा	गुजरात	30-11-2009
	आलवाडा	धानेरा	बनासकांठा	गुजरात	30-11-2009
	कुंडी	धानेरा	बनासकांठा	गुजरात	30-11-2009
878 दिनांक 13-03-2003,	कुपट	डीसा	बनासकांठा	गुजरात	30-11-2009
880 दिनांक 06-04-2004,	मालगढ	डीसा	बनासकांठा	गुजरात	30-11-2009
	जोरापुरा	डीसा	बनासकांठा	गुजरात	30-11-2009
	कंसारी	डीसा	बनासकांठा	गुजरात	30-11-2009
	धेरवाडा	डीसा	बनासकांठा	गुजरात	31-08-2009
	भाचरवा	डीसा	बनासकांठा	गुजरात	31-08-2009
	बुराल	डीसा	बनासकांठा	गुजरात	30-11-2009
	मुडेठा	डीसा	बनासकांठा	गुजरात	15-05-2010
	पालडी	डीसा	बनासकांठा	गुजरात	31-03-2010
	रतनपुर (गजनीपुर)	डीसा	बनासकांठा	गुजरात	31-01-2011
	नई भीलडी	डीसा	बनासकांठा	गुजरात	15-12-2009
	पुरानी भीलडी	डीसा	बनासकांठा	गुजरात	15-12-2009
	सोयला	डीसा	बनासकांठा	गुजरात	15-12-2009
	गरनाल मोटी	डीसा	बनासकांठा	गुजरात	15-12-2009
	खेटवा	डीसा	बनासकांठा	गुजरात	15-12-2009
	सोतंबला	डीसा	बनासकांठा	गुजरात	15-12-2009
	डेडोल	डीसा	बनासकांठा	गुजरात	30-11-2009
	लोरवाडा	डीसा	बनासकांठा	गुजरात	30-11-2009
	बडावल	डीसा	बनासकांठा	गुजरात	30-11-2009
	समशेरपुरा	डीसा	बनासकांठा	गुजरात	30-11-2009
	बाइवाडा	डीसा	बनासकांठा	गुजरात	31-08-2009
	विठोदर	डीसा	बनासकांठा	गुजरात	30-11-2009
1045 दिनांक 27-03-2003,	मांडला	कांकरेज	बनासकांठा	गुजरात	31-03-2010

1	2	3	4	5	6
1045 दिनांक 27-03-2003,	जाखेल	कांकरेज	बनासकांठा	गुजरात	31-03-2010
756 दिनांक 25-03-2004,	शिरवाडा	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	चांगा	कांकरेज	बनासकांठा	गुजरात	31-01-2011
	अधगाम	कांकरेज	बनासकांठा	गुजरात	15-05-2010
	नाथपुरा	कांकरेज	बनासकांठा	गुजरात	15-05-2010
	कुडवा	कांकरेज	बनासकांठा	गुजरात	15-05-2010
	विभानेसडा	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	ईन्द्रमाणा	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	राजपुर	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	काकर	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	नेकोई	कांकरेज	बनासकांठा	गुजरात	31-03-2010
	पादरडी	कांकरेज	बनासकांठा	गुजरात	30-04-2010
	चीमनगढ	कांकरेज	बनासकांठा	गुजरात	30-04-2010
	रतनगढ	कांकरेज	बनासकांठा	गुजरात	30-04-2010
	रवियाणा	कांकरेज	बनासकांठा	गुजरात	30-04-2010
	खोडा	कांकरेज	बनासकांठा	गुजरात	30-04-2010
	खीमाणा	कांकरेज	बनासकांठा	गुजरात	15-05-2010

[फा. सं. आर-31015/2/2012-ओ आर-II]

पी. के. सिंह, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 6th September, 2012

S.O. 2858.—Whereas, by notifications of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. Nos. and date as mentioned in the Schedule below issued under sub-section (1) of Section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government acquired the Right of User in the said lands specified in the schedule appended to those notifications.

And, whereas, in exercise of powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government vested the right of user in the said lands, free from all encumbrances in the HPCL-Mittal Pipelines Limited.

And, whereas, the Competent Authority has made a report to the Central Government that the pipeline for the purpose of transportation of Crude Oil from Mundra in the State of Gujarat to Bathinda in the State of Punjab by HPCL-Mittal Pipelines Limited has been laid in the said lands, so the operation may be terminated in respect of the land the description of which in brief is specified in the Schedule annexed to this notification.

Now, therefore, as required under Explanation 1 of Rule 4 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules 1963, the Central Government hereby declare the dates mentioned in Column 6 of the said schedule as the dates of Termination of Operation in villages of District Banaskantha in the State of Gujarat.

SCHEDULE

S.O. No. and Date	Name of the Village	Taluka	District	State	Date of Termination
1	2	3	4	5	6
S.O. No. 871 dtd.	Khinnat	Dhanera	Banaskantha	Gujarat	30-11-2009
13-3-2003	Ravi	Dhanera	Banaskantha	Gujarat	30-11-2009

1	2	3	4	5	6
S.O. No. 755 dtd. 24-3-2004	Wasda	Dhanera	Banaskantha	Gujarat	30-11-2009
	Mandal	Dhanera	Banaskantha	Gujarat	30-11-2099
	Rampura(Vaghpura)	Dhanera	Banaskantha	Gujarat	30-11-2009
	Alwada	Dhanera	Banaskantha	Gujarat	30-11-2009
	Kundi	Dhanera	Banaskantha	Gujarat	30-11-2009
S.O.No. 878 dtd. 13-3-2003	Kupat	Deesa	Banaskantha	Gujarat	30-11-2009
	Malgadh	Deesa	Banaskantha	Gujarat	30-11-2009
S.O. No. 880 dtd. 6-4-2004	Jorapura	Deesa	Banaskantha	Gujarat	30-11-2009
	Kansari	Deesa	Banaskantha	Gujarat	30-11-2009
	Therwada	Deesa	Banaskantha	Gujarat	31-08-2009
	Bhacharva	Deesa	Banaskantha	Gujarat	31-.08-2009
	Bural	Deesa	Banaskantha	Gujarat	30-11-2009
	Mudetha	Deesa	Banaskantha	Gujarat	15-05-2010
	Paldi	Deesa	Banaskantha	Gujarat	31-03-2010
	Ratanpur (Gajnipur)	Deesa	Banaskantha	Gujarat	31-01-2011
	New Bhildi	Deesa	Banaskantha	Gujarat	15-12-2009
	Old Bhildi	Deesa	Banaskantha	Gujarat	15-12-2009
	Soyla	Deesa	Banaskantha	Gujarat	15-12-2009
	Garnal Moti	Deesa	Banaskantha	Gujarat	15-12-2009
	Khetwa	Deesa	Banaskantha	Gujarat	15-12-2009
	Sotambla	Deesa	Banaskantha	Gujarat	15-12-2009
	Dedol	Deesa	Banaskantha	Gujarat	30-11-2009
	Lorwada	Deesa	Banaskantha	Gujarat	30-11-2009
	Vadawal	Deesa	Banaskantha	Gujarat	30-11-2009
	Shamsherpura	Deesa	Banaskantha	Gujarat	30-11-2009
	Baiwada	Deesa	Banaskantha	Gujarat	31-08-2009
	Vithodar	Deesa	Banaskantha	Gujarat	30-11-2009
S.O. No. 1045 dtd. 27-03-2003	Mandala	Kankrej	Banaskantha	Gujarat	31-03-2010
	Jakhel	Kankrej	Banaskantha	Gujarat	31-03-2010
S.O. No. 756 dtd. 25-03-2004	Sirwada	Kankrej	Banaskantha	Gujarat	31-03-2010
	Changa	Kankrej	Banaskantha	Gujarat	31-01-2011
	Adhgam	Kankrej	Banaskantha	Gujarat	15-05-2010
	Nathpura	Kankrej	Banaskantha	Gujarat	15-05-2010
	Kundva	Kankrej	Banaskantha	Gujarat	15-05-2010
	Vibhanesda	Kankrej	Banaskantha	Gujarat	31-03-2010
	Indramana	Kankrej	Banaskantha	Gujarat	31-03-2010
	Rajpur	Kankrej	Banaskantha	Gujarat	31-03-2010
	Kakar	Kankrej	Banaskantha	Gujarat	31-03-2010
	Nekoi	Kankrej	Banaskantha	Gujarat	31-03-2010
	Padardi	Kankrej	Banaskantha	Gujarat	30-04-2010
	Chimangadh	Kankrej	Banaskantha	Gujarat	30-04-2010
	Ratangadh	Kankrej	Banaskantha	Gujarat	30-04-2010
	Raviyana	Kankrej	Banaskantha	Gujarat	30-04-2010
	Khoda	Kankrej	Banaskantha	Gujarat	30-04-2010
	Khimana	Kankrej	Banaskantha	Gujarat	15-05-2010

[F. No. R-31015/2/2012.OR-II]

P. K. SINGH, Director

श्रम और रोजगार मंत्रालय

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 45,48 और 49/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था ।

[सं. एल-41012/03, 04 और 05/2011-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 16th August, 2012

S.O. 2859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45,48, 49/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Southern Railway, and their workmen, received by the Central Government on 16-8-2012.

[No. L-41012/03, 04 & 05/2011-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 16th July, 2012

Present: A.N. JANARDANAN Presiding, Officer

I. .D. Nos. 45, 48 and 49 of 2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their workmen]

S. No	ID No.	Reference No. & Date	Name of the 1st Party S / Sri	Name of the 2nd Party
1.	45/2011	L-41012/05/2011-IR(B-I) dated 6-6-2011	S. Ibrahim	The Dy. Chief Personnel Offr./Stores/ Perambur Southern Railway Ayanavaram Chennai-23
2.	48/2011	L-41012/03/2011-IR(B-I) dated 2-6-2011	H. Janakiraman	The Dy. Chief Personnel Offr./Stores/ Perambur Southern Railway Ayanavaram Chennai-23
3.	49/2011	L-41012/04/2011-IR(B-I) dated 2-6-2011	D. Devaraj	The Dy. Chief Personnel Offr./Stores/ Perambur Southern Railway Ayanavaram Chennai-23

Appearance:

For the 1st Party/Petitioner : Sri S. Bhakthavatsalam, Authorized Representative

For the 2nd Party/Management : Sri A. Ravi, Authorized Representative

COMMON AWARD

The Central Government, Ministry of Labour and Employment vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication.

2. The schedule mentioned in the order of reference in the above IDs are as under:

I D 45/2011

"Whether the action of the management of Controller of Stores, General Stores Depot, Southern Railway, Perambur, Chennai is not reinstating Sri S. Ibrahim, Ex-Piece Rate Tailor, in accordance with the Order dated 20-08-2005 of Hon'ble High Court, Chennai in W.P. No. 14369/1999, 8022/2000 and 20798/1999 is legal and justified? To what relief the workman is entitled?"

I D 48/2011

"Whether the action of the management of Controller of Stores, General Stores Depot, Southern Railway, Perambur, Chennai is not reinstating Sri H. Janakiraman, Ex-Piece Rate Tailor, in accordance with the Order dated 20-08-2005 of Hon'ble High Court, Chennai in W.P. No. 14369/1999, 8022/2000 and 20798/1999 is legal and justified? To what relief the workman is entitled?"

I D 49/2011

"Whether the action of the management of Controller of Stores, General Stores Depot, Southern Railway, Perambur, Chennai is not reinstating Sri D. Devaraj, Ex-

Piece Rate Tailor, in accordance with the Order dated 20-08-2005 of Hon'ble High Court, Chennai in W.P. No. 14369/1999, 8022/2000 and 20798/1999 is legal and justified? To what relief the workman is entitled?"

3. After the receipt of Industrial Disputes, this Tribunal has numbered it as I.D. 45, 48 & 49 of 2011 and issued notices to both sides. Both sides entered appearance through their authorized Representative and filed Claim Statement and Common Counter Statement.

4. In all these cases, the claims of the petitioners are common. On behalf of the petitioners, since the issues are the same, common set of documents is adopted. The petitioners have adduced evidence in common for all the IDs.

5. The averments in the separate Claim Statements but with common or the same averments in all, briefly read as follows:

The petitioners, three in number viz. S/Sri S. Ibrahim, M. Janakiraman and D. Devaraj on application for the post of Tailor in response to notice issued by Southern Railway based on Railway Board directive were selected by the Committee of Officers after their passing Trade Test of Skilled Tailor and Interview. They had been working continuously since 13-06-1979 to 31-08-1985 as Skilled Tailors and are deemed to be permanent workers under Section- 25 (B) (i) and Section-2(S) of the ID Act. Petitioners raised a Claim Petition No. 40/88 against unlawful retrenchment. Labour Court awarded Rs. 7,800 towards compensation and difference in wages on 28-04-1982. Writ Petition No. 10296 of 1996 filed against the Labour Court Award was dismissed and the award amount was paid to the petitioners. Some of the co-workers employed as Skilled Tailor alongwith the petitioners from 1980 to 1986 claimed for absorption in W.P No. 14369 of 1999, 8022 of 2008, WMP No. 27098 of 1999 in High Court of Madras where the retrenched workers were ordered to be absorbed in vacancies of "D"category who have put in more than 180 days of service in a calendar year from 1980 to 1986. Respondent has not maintained seniority list of Skilled Tailors under Rule-78 of the ID Rules, 1957. Muster Roll for the period from 13-06-1979 to 31-08-85 were not maintained under Rule-25D of the ID Act. The petitioners were retrenched violating Section-25G and not reinstated under Section-25H. Appeal of the Respondent in WA No. 1191 of 1997 was dismissed at the admission stage on 25-09-1997. Appeal before Supreme Court was dismissed on 23-02-1998. While the juniors were reinstated as per High Court direction, the senior petitioners entitled for absorption without any disparity or discrimination are but discriminated. Petitioners worked as Skilled Tailors for long duration of 1979 to 1985 and are not piece rate workers. Respondent's reply is wholly unjustified and unlawful. Petitioners were initially selected by a Recruitment Committee of Officers as Skilled Tailors and were paid wages of skilled regular tailors of Stores Department. They are workmen under Section-2 (s) of the ID Act and Section-2(34) of Railway Act, 1989 and classified as permanent worker under Section-3 of the Standing Order Act, 1946. They are not contract workers or piece rated workers but are regular skilled workers. There was no contract agreement as in Contract Labour (Regulation & Abolition) Act, 1970. Contract work is prohibited in the factory under 10/2 of Contract Regulation Act. They performed perennial nature of work for more than 6 years continuously. ID raised before conciliation having failed the reference is occasioned. Direction in Para-8 of judgment of the Hon'ble High Court of Madras rendered by Hon'ble Justices Mr. M. Sadasivam and Ramalingam may be implemented by absorbing the petitioners in the scale of Rs. 2500—3500 with other terminal benefits on obtaining superannuation.

6. Common Counter Statement averments in reply to Claim Statement briefly read as follows :

The claims are not maintainable. Petitioners have no subsisting cause of action to maintain the petitions under the ID Act or as a matter of fact under any law. Petitions have to be dismissed for non-joinder/misjoinder of parties. No authenticated document for authorization of Sri Bhakthavatsalam has been filed. Petitioner were not employed in any capacity by the Railway. There is no employer-employee relationship interse. There is no proof for their employment as claimed by them. Under a policy evolved by the Railway Board to supply uniform the Railway employees under the public image category staff, consequent to public notification calling certain persons to stitch uniforms, clearly mentioning that it was not a recruitment of any kind and that tailors so engaged would only be piece rated workers paid on the basis of the quantum of work turned out and on conditions set out as mentioned under Sub-Clause (i) to (iv) of Para-2-Claim Statement. Petitioners as some among a number of tailors approached for whom Trade Test was conducted to ascertain their suitability and were entrusted the work on contract basis as per collateral records and the administration entered into independent contracts with each individual. The initial engagement was on contract for six months or completion of the work whichever is earlier. In the agreement dated 13-06-1979 Railway reserved the right to terminate the contract of the piece rated tailors without any reason. The piece rated tailors were also free to revoke their work with three days notice to the Railway. They were neither casual labour nor daily rated workmen but were only piece rated tailors who agreed to stitch garments on contract. Their charges were paid when work was done and payment bills were released. They were not paid anything if garments were not stitched. As per agreement they were free to enter or leave Railway premises anytime between 0800 hours and 1600 hours on all working days in relation to their contractual work. They have no any privileges available to casual labour

or daily rated workmen. There was no attendance/daily muster maintained for them as in the case of general worker. Writ Petition cited by the petitioners, though not strictly relating to regulation of relation between Railway workers and others, the Railway did not contest the same before the Labour Court and hence Rs. 7800 had to be deposited in the Court of Law. The petitioners cannot be allowed to take undue advantage of that. Railways never employed tailors as skilled workers from 1980 to 1986 or volunteered to fill up vacancies in Group "D" or Group "C" categories. Hence citing the Writ Petition may not be relevant. No claim for absorption can be entertained. Seniority List and Muster Roll maintained about 30 years ago is difficult to be produced at this distance of time. Violation of rule of Law could have been challenged by the petitioner within the period of limitation. Provisions quoted by the petitioner are not applicable at this distant date. There is no discrimination against the petitioners on treatment with any similarly placed persons. Judgment of the High Court cited are not relevant to the dispute. Railway's entry into agreement with private citizens to execute several works in public interest as a public carrier and for public good does not automatically entail them any benefit of relationship as employer-employee. The claim is to be dismissed.

7. Points for consideration are :

(i) Whether not reinstating the petitioners, Ex-Piece Rate Tailors in accordance with the order dated 20-08-2005 of the High Court of Madras in WP No. 14369/1999, 8022/2000 and 20798/1999 is legal and justified?

(ii) To what relief the concerned petitioners are entitled?

8. The parties prayed to permit common evidence to be adduced and common trial held in respect of all the IDs viz. 45, 48 and 49 of 2011 which was allowed and accordingly common evidence was recorded in ID 45/2011. Though petitioners were filing separate Claim Statements but with the same and common averments independently, the same were met by the Respondent by a single pleading with the filing of a Common Counter Statement thus manifesting the cases to be dealt with singly in every respect. Petitioners also were filing a common Proof Affidavit in lieu of Chief Examination in all the three IDs together and examined one common witness for all of them. Common evidence on behalf of the petitioners was recorded in ID No. 45/2011.

9. Common evidence consists of the testimony of WW1 and Ex.W1 to Ex.W6 on the petitioner's side and the testimony of the MW1 and Ex.M1 to Ex.M7 on the Respondent's side.

Points (i) & (ii)

10. Heard both sides. Perused the pleadings, documents, evidence and the written arguments filed on behalf of the petitioner. The prominent arguments advanced on behalf of the petitioners are that in tune with the judgment of the Hon'ble High Court of Madras in WP No. 14369/1999,8022/2000 and WPMP No. 20798/1999 ordering absorption of retrenched similar workers against the vacancies of the "D" category who have put in more than 180 days in a calendar year, claim as per which has not been contradicted or commended by the Respondent indicating non-application of mind of the Respondent to the claim of petitioners, who are still juniors to the petitioners, the petitioners are to be absorbed. Under Ex.W4-Representation dated 23-02-2006 to the Ministry of Railways, as per Ex.W6-Reply dated 19-10-2008 they have been agreed to be absorbed. In spite of Court's order as per IA 124, 125, 126 of 2011 for production of documents by the Railways they have not been produced. Hence adverse inference may be drawn. The petitioners may be absorbed with all benefits upto date of superannuation and they may be extended all terminal benefits without discriminating against their counterparts but on equal parity treatment with them.

11. Reliance was placed on behalf of the petitioner on the various decisions in : THE STATE OF JAMMU AND KASHMIR AND ANOTHER VS. TEJ KRISHAN KACHROO AND ANOTHER (2011-LAB-IC-4132) wherein it is held by High Court of J&K that "Implementation of benefit granted to one set of employees----Same benefits to other set of employees --- Would be automatic Moreso when no distinguishing feature between petitioners vis-a-vis respondents in matter of applicability of Civil Service Rules, was shown" . SATYANARAIN VAISHNAV AND OTHERS VS. RSRTC AND OTHERS (2011-LAB-IC-939) wherein Hon'ble High Court of Rajasthan held "Petitioners working as workmen in Respondent --- Corporation --- Thus mode of payment on basis of job work basis or piece rate basis --- Would not alter character of workmen/industrial relationship between petitioners and Respondent"

12. Prominent arguments on behalf of the Respondent are that they were selected only as Piece Rate Tailors specified as not recruitment but on individual contract with the liability of termination without notice and subject to review every six months. Petitioners are not in the list of Piece Rate Tailors directed to be regularized in the High Court order and therefore the petitioners are not entitled to any relief.

13. The referred question is whether denial of reinstatement to the petitioners as Ex-Piece Rate Tailors in terms of the order dated 20-08-2005 of the Hon'ble High Court of Madras in 14369/1999, 8022/2000 and 20798/1999 is legal and justified? So to say the crucial question is whether in terms of the direction of the said High Court order the petitioners are also entitled to reinstatement. Copy of the said High Court order is Ex.M7 wherein there are 22 Respondent in the three Writ Petitions filed by the Union of India represented by the General Manager, Southern Railway, Chennai and Two Others viz. (i) The Controllers

of Stores, Southern Railway and (ii) District Controller of Stores, General Stores Depot, Southern Railway. On perusal, the common order deals with the case of the 22 Respondents in respect of whom discernibly the Central Government Industrial Tribunal as well as Central Administrative Tribunal rendered finding regarding existence of employer-employee relationship between Respondents and the petitioners therein and the said factual finding is not disturbed or interfered with by the High Court. Pursuant to the order a scheme was evolved for the appointment of 22 Piece Rate Tailors as Substitute Group "D" on conditions and in accordance therewith. With modification of the scheme conditions mutatis-mutandis the scheme was ordered to be implemented by the High Court.

14. The present question is whether the three petitioners, now before me, could be covered under the scheme evolved, and implemented as above so as to extend to them too, the benefits claimed. The decision of the Jammu & Kashmir High Court relied on by the petitioners laying down that extension of the same benefits to another set of same natured employees in the matter of benefits granted to one of such sets of employees would be automatic is only when no distinguishing feature between the two sets of employees in the matter of applicability of Civil Service Rules is shown. The question here is whether there has not been any distinguishing feature between the two sets of employees shown to exist. Here the case of the Respondent is that petitioners were only Piece Rate Tailors selected after notice specifying it to be not a recruitment and initially for six months and subject to review. They were also liable to be terminated without notice. What were the conditions or the nature of engagement of the workmen as Piece Rate Tailors absorbed by the decision of the Hon'ble High Court of Madras, we are at dark, in the absence of any sufficient materials adduced by the petitioners. Petitioners have not produced any such materials to disclose such details. At the instance of the petitioners there was an IA filed by the petitioner for directing the Respondent to produce 10 documents which if had been produced would have shed light on the above said aspects as they say but which the Respondent failed to produce for the alleged reason that they have not been available at this distance of time. The said enumerated 10 documents being not documents discernibly relating to any matters which would especially show any distinguishing feature between the petitioners herein and their so-called counterparts in the decision cited, and the burden being especially on the petitioners to show that there are no distinguishing features between the petitioners and beneficiaries in the decision of the High Court, Madras and the same having not been discharged, petitioners have failed to show that the benefits enured to such beneficiaries on automatic extension have to be extended to them as well. A proper case enabling to draw adverse inference against Respondent has not been made out for non-production of documents called for from them. Copies of documents which petitioners themselves may produce, production whereof cannot be thrust upon the adversary. No documents containing the ratio-decidendi of the decisions of the CGIT or the Central Administrative Tribunal holding employer-employee relationship which underlie the decision of the Hon'ble High Court of Madras in the 3 W.O.Ps. evolving scheme for regularization have been produced by the petitioners. Therefore the petitioners cannot be said entitled to the benefits under the judgment of the Hon'ble High Court of Madras as referred. The claim is therefore only to be dismissed and the petitioners are not entitled to any relief much less reinstatement.

15. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th July, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner WW1, Sri M. Janakiraman

For the 2nd Party/Management MW1, Sri S. Munusamy

Documents Marked :—

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	14-10-1983	Copy of the application for the post of Tailor submitted to the Distt. Controller of Stores, Perambur, Southern Railway.
Ex.W2	18-01-1984	Copy of the letter addressed to the petitioner to attend Trade Test on 28.01.1984.
Ex.W3	10-08-1984	Copy of the letter which is engagement order.
Ex.W4	23-02-2006	Copy of the Memorandum submitted to Ministry of Railways for absorption against vacancy.
Ex.W5	23-02-2006	Copy of the letter written by the Personal Assistant, Sri N. Srikumar to the Railways authorities to consider the case of the petitioner.
Ex.W6		Letter received from Secretary, Controller Stores to the petitioner Janakiraman stating that his case is being considered as per Railway Minister letter dated 19.05.2008.

On the Management's side

Ex. No.	Date	Description
Ex.M1	14-09-1993	Notice
Ex.M2	03-01-1979	Agreement for stitching Railway Uniform
Ex.M3	August 1988	Order Copy of C.P. No. 40/1998
Ex.M4	10-11-1999	Order Copy on WP 10236/96, M.Ps. 27237/96 and 13516/95
Ex.M5	30-06-2009	Order Copy on CP No. 3,5 & 6 of 2008
Ex.M6	13-07-1999	Order Copy on OA No. 73/1999
Ex.M7	20-08-2005	Order Copy on WP No. 14369/1999, 8022/2000 & WPMP No. 20798/1999

नई दिल्ली, 17 अगस्त, 2012

का.आ. 2860.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट संदर्भ संख्या 15/2007 को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-8-2012 को प्राप्त हुआ था ।

[सं. एल-41012/28/2006-आईआर(बी-I)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 17th August, 2012

S.O. 2860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the management of Western Railway, and their workman, received by the Central Government on 17-8-2012.

[No. L-41012/28/2006-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer Sh. N .K.Purohit

I.D.15/2007

Reference No.L-41012/28/2006-IR(B-I)

dated: 6-3-2007

Sh. H.K.Saraswat
S/o Late Sh. P.K. Sharma
R/o Plot No.20., Kalyanpuri Colony., New Sanganer Road, Sodala, Jaipur.

V/s

1. The Chief Manager,
Jackson Co-operative Credit Society of
The Employees of Western Railway Ltd.,
Nasir Barucha Marg, Grant Road,
Mumbai-400007.
2. The Branch Manager
Jackson Co-operative Credit Society of
The Employees of Western Railway Ltd.,
Power House Road, Railway Station, Jaipur.

Present :

For the Applicant : Sh. Suresh Kashyap

For the Non-Applicants : Sh. Ankur Saxena

AWARD

9-7-2012

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

> "Whether the action of the management of Jackson Co-operative Credit Society of the employees of Western Railway Ltd. through Chief Manager in struck off of the name from the roll of the Society of Shri H.K.Saraswat, LDC w.e.f. 20.10.99 without conducting any enquiry is legal and justified? If not, what relief the workman is entitled to and from which date?"

2. The workman in his claim statement has pleaded that he was appointed as LDC by the non-applicant society. In the year 1999, his posting was at branch office, Ratlam. On receiving information regarding illness of his mother in law, he proceeded on two day's leave to look after her at Jaipur. Thereafter, he made a request for extension of his leave. He has further pleaded that during this period his father expired on 18.8.99 and due to depression he himself fallen ill. When he was going to join duty after obtaining fitness certificate from Medical Officer, he received a letter dated 6.9.99 from the Branch Manager, Ratlam stating that he was unauthorisedly absent from his duties w.e.f. 5.7.99. Later on he came to know that his name has been struck off from the roll on 20.10.99. The workman has alleged that his services have been illegally terminated without any notice or compensation in lieu of notice, therefore, the action of the management of the society was in violation of Section 25-F & G of the I.D.Act as well as principle of natural justice.

3. The society in its reply has contended that the workman has raised this industrial dispute after inordinate delay of more than five years. It has also been contended that the dispute has not been referred by appropriate government i.e. State Government of Madhya Pradesh, therefore, reference is bad in law.

4. The society has admitted in its reply that name of the workman has been removed from the muster roll of the society w.e.f. 20.10.99. It is alleged that past record of the workman was bad and he had started remaining away from work w.e.f. 5.7.99 and thus, deemed to have voluntarily abandoned and left the employment of the society on his own. As per standing orders and rules of the society no enquiry was required to be held in peculiar facts and circumstances of the case. The society has contended that the workman started remaining away from work w.e.f 5.7.99 without leave and permission and without prior intimation. Therefore, he was advised by the Branch Manager, Ratlam vide his letter dated 22.7.99 to submit his written explanation for unauthorized absence but the workman neither resumed his duties nor submitted his explanation. The said letter was sent at his Ratlam address which was received back with the remark "not found". Thereafter, attempts were made to serve the communication by hand delivery at Ratlam address. However, it was learnt that he had left the residence at Ratlam but did not intimate change of address to the society. A telegram was also sent to him at Jaipur address advising him to report for his duties. A letter dated 21.9.99 was sent at his Ratlam, Jaipur and Ajmer addresses. He was called upon to give his say within seven days as to why his services should not be terminated on account of continued unauthorized absence. Despite this the workman did not resume his duties. He also failed to submit any. explanation for his unauthorized absence. Thus, the society had no alternative but to invoke clause 605(A) of Establishment Manual and had to struck off his name from the muster roll of the society w.e.f 20.10.99 and intimation in this regard was sent to him vide letter dated 20.10.99. It has further been contended that the workman after receipt of the said letter sent a letter dated 27.10.99 in which he acknowledged the receipt of the letter dated 21.9.99 and 20.10.99. He failed to explain why he did not intimate to the society about his absence from the work supported by the documents immediately after his absence w.e.f 5.7.99. Therefore, his request to review the decision was not accepted. The mercy appeal submitted by the workman on 21.3.2000 was found devoid of any merit and the same was rejected.

5. The society in its reply has also contended that earlier in year 1995 also the society had to treat the workman as having voluntarily abandoned the employment of the society vide letter dated 12.6.95 for remaining absent of work. However, after considering his representation favourably he was allowed to join his duties vide order dated 9.9.95.

6. In rejoinder, the workman has pleaded that he remained absent due to self illness, illness of his mother in law and death of his father during period 5.7.99 to 20.10.99 and he did not abandon his job. He has further pleaded that prior to striking off his name from the roll, no show cause notice was given to him.

7. In evidence, the workman has filed his affidavit whereas the society has filed counter affidavit of Sh. Muniraj Jadam.

8. The workman and the management of the society have filed documents Ex-1 to Ex-8 and Ex-M-1 to M-43 respectively in support of their respective case.

9. Heard the learned representatives on behalf of both the parties and scanned the relevant record.

10. The learned representative for the workman has submitted that burden is on the society to show that name of the workman can be struck off validly without any enquiry. Willful absence amounts to misconduct and admittedly, the society has not conducted any enquiry against the workman. He has further submitted that the society has failed to produce any document to prove that letters and telegram said to be sent to the workman before 20.10.99 were actually delivered or received by him. He has further submitted that the workman was in job for last 10 years and he had no intention to relinquish his job. Failure to perform duties must be with actual intention to abandon and relinquish office. Merely on the basis of his absence for a period is cannot be said that he had any intention to abandon the job. He has also submitted that name of the workman has been struck off from the roll without affording any opportunity of hearing. Further, no enquiry was conducted therefore, the action of the society is in violation of principle of natural justice. Striking off the name from the roll amount to retrenchment but no notice or compensation in lieu of notice was given, therefore, the action of the management is also in violation of the Section 25-F of the I.D.Act. To canvass support for his contentions, he has relied on 1979 (38) FLR (SC) 95, G. T.LAD V/s Chemical & Fibers of India Ltd., 1998(1) LLN (Born.) 259 Gaurishankar V/s Eagle Spring Industries (Private) Ltd., 1993 II LLN 575 (SC) B.K.Yadav V/s J.M.A. Industries Ltd., FJR (F&H) 161 Punjab State small Industries Co. V/s Union Territory of Chandigarh, FLR 2002 (1) 608, Jamilla & ors. V/s State of Raj., 1980 (II) LLN (SC) 170 Santosh Gupta V/s State Bank of Patiala, (2001) 1 SCC 61 Scooters India Ltd. V/s M.Mohammad, FJR 1978 Vol.55 210(SC), Delhi Cloth & General Mills Co. Ltd V/s Shambhu Nath Mukherji & ors.

11. Per contra, learned representative for the society has contended that industrial dispute was raised after inordinate delay of five years therefore, the claim of the workman is not maintainable. He has further contended that the workman did not submit any application before leaving headquarter. He has not produced any document pertaining to application for leave & extension of leave said to be submitted by him in his applications he has

stated that he had to proceed on leave due to illness of his mother in law but he had submitted certificate of self sickness. He has admitted that letter dated 21-9-99 and 20-10-99 were received by him- He has also admitted that letter dated 6-9-99 was received by him. The learned representative has also submitted that the letters which the workman had written to the society were sent after striking off his name from the roll. He has further contended that provisions of Section 25-F are not applicable in the present matter in view of the clause 605(A) of the Establishment Manual. The case laws referred to by the learned representative for the workman are based on principle of natural justice and they are not applicable in the present matter in view of the above clause providing for deemed abandonment of service in case of unauthorized absence from duties.

12. I have given my though.ful consideration to the rival submissions of both the sides and have gone through the decisions referred to by the learned representative on behalf of the workman.

13. Admittedly, the name of the workman was struck off on 20-10-99. The mercy appeal filed by the workman was rejected on 28-2-2000. The writ petition no. 4690/2002 filed by the workman was allowed to be withdrawn to seek remedy before the appropriate government in accordance with law vide order dated 21-10-2005. The dispute has been referred for adjudication vide order dated 6-3-07.

14. It is well settled that provisions of Limitation Act are not applicable in the matter of industrial dispute referred u/s 10 of the I.D.Act. The claim of the workman cannot be rejected merely on the ground of delay in raising dispute. Therefore, the contention of the non-applicant that due to inordinate delay the claim is not maintainable is not sustainable.

15. The next contention of the learned representative on behalf of the non-applicant that the reference has not been made by appropriate Government is also not tenable. It is an admitted fact that the society is a registered co-operative society under the Maharastra Co-operative Act, 1960 and is governed by the Multi State Co-operative Societies Act, 2002 and conduct its operation in different states, therefore, it cannot be said, that Central Government is not a appropriate government in this matter.

16. Now, the question remains for consideration is as to whether the action of the management of the society in striking off the name of the workman from roll by invoking clause 605 of the Establishment Manual of the Society is justified and legal?

17. The society is governed by Standing Orders framed by it which are called as Establishment Manual of the Society and clause 605(A) provide as under :—

(a) "an employee who remains absent without leave for a period of more than 10 days without valid reasons shall be deem to have abandoned his service and his service shall stand terminated automatically.

(b) "similarly an employee who overstays his leave for more than 10 days without valid reasons shall be deem to have abandoned his service and his service shall stand terminated automatically."

18. By invoking above clause the society vide its letter dated 20-10-99 (Ex-M-46), informed the workman as under:—

"You are hereby advised that despite of repeated advises, you have not resumed your duties at Br.Office (JCCS) RTM till date, inspite of your acknowledgement of the letters issued by Br. Manager RTM. It appears that you are not interested in your job, hence accordingly your name has been removed from the muster roll of the Society with effect from 20-10-1999, in terms of this Office letter No. even dated 21-9-1999 as your service has been voluntarily abandoned."

19. In 1979(3) FLR (SC) 95 Hon'ble Apex court while considering the meaning of the term abandonment of service has observed as under:-

"In the Act, we do not find any definition of the expression 'abandonment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and in a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office. To constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same."

20. In 1988 (I) LLN 259 (Bom.), Hon'ble court has held that it is for the employer to prove that the workman had abandoned the service. Hon'ble court has further held that in case of abandonment of service the employer has to give notice to workman calling upon to resume his duties and also to hold an enquiry before terminating his service.

21. In 1993(II). LLN 575, the employer intimated the workman that he had absented himself from duty continuously for more than 8 days without leave or prior information or previous permission from the employer and was therefore, "deemed to have left the service of the company on your own account and lost your lien on the appointment w.e.f. 3-12-80 under the certified standing

orders." While considering the provisions of clause 13(2)(iv) of the Standing Orders which are similar to the clause 605 of the Establishment Manual of the Society, Hon'ble Apex court has held that termination of service under Standing Order without any domestic enquiry or without giving opportunity to employee is violative of principle of natural justice. .

22. In (2001) 1 SCC 61, the name of the respondent therein was removed from the roll of the company under Standing Order 9.3.12 which provides that if a workman who remains absent from duty without leave in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the company of his own accord and his name will accordingly be struck off the rolls. Hon 'ble Apex court held that such a provision cannot be invoked for automatic termination of the workman without complying with principle of natural justice.

23. What flows from the decisions supra is that burden is on the employer to prove that workman had abandoned the service and enquiry was conducted or opportunity was given in consonance with the principle of natural justice before striking off name from the roll. Though the facts of the decisions referred to are dissimilar but the principle laid down in the above decisions regarding invoking provisions of the Standing Orders for automatic termination is applicable in the present matter as the provision in clause 605 of the Establishment Manual are almost similar to the provisions of the respective Standing Orders which have been considered in the decisions referred to.

24. The workman has stated that after receiving information about illness of his mother in law, he proceeded on two day's leave with permission to leave headquarter to look after his mother in law at Jaipur but he has not produced any documentary or oral evidence to substantiate his above statement. The management has denied that any such application was submitted by the workman. The workman has failed to establish that he proceeded on two day's sanctioned leave and later on an application for extension of leave was sent by him and during period 5-7-99 to 20-10-99 he remained away from his duties with leave and permission or with prior intimation.

25. Thus, it is evident that the workman has remained absent for a period of more than 10 days without leave. Even if, he proceeded on two day's. Leave he had overstayed for more than 10 days, therefore, provisions of clause 605 of the Establishment Manual are attracted.

26. The workman has stated that he did not abandon his job and he had valid reasons for his absence. In rebuttal, the management witness Sh. Muniraj has stated that medical certificates and death certificate of his father were not produced by the workman prior to 20-10-99 but he has admitted that the father of the workman had died on 18-8-99.

27. Admittedly, the workman had sent medical certificate of self sickness for the period 5-7-99 to 14-8-99 and 21-8-99 to 20-10-99, death certificate of his father and document (M-20) pertaining to sickness of his mother in law. The society has placed the copies of above document on record. The contention of the society is that above documents were produced by him subsequent to the date of striking off his name from the roll i.e. 20-10-99. But it is not the case of the society that the said documents were not genuine.

28. It has been contended that prior to striking off the name of the workman from the roll, notices and telegrams were sent to him regarding his unauthorized absence since 5-7-99. In this regard, learned representative for the society has brought my attention towards the letter dated 22-7-99 (Ex-M-44), letter dated 21-9-99 (Ex-M-21),telegram dated 23-7-99, leter dated 20-10-99(Ex-M-46).

29. Upon perusal of the above documents, it reveals that Branch Manager, Ratlam addressed to the workman letter dated 22-7-99 at Ratlam address but admittedly the said letter was received back from the postal authority with the remarks "not found". It has been admitted in the reply itself that attempts were made to serve the communication by hand delivery at Ratlam address, but it was learnt that he had left the residence at Ratlam. Thus, the said letter was not delivered to the workman. Upon perusal of the letter dated 21-9-99(M-21) sent by Chief Manager to the workman reveals that it was sent at Ratlam address, Ajmer address as well as Jaipur address and by the said letter he was called upon to give his says as to why his services should not be terminated on account of his continued unauthorized absence but acknowledgement receipt of the letter and the postal receipt have not been produced. It cannot be inferred that the said show cause notice was delivered to the workman. A photocopy of the telegram said to be sent on 23-7-99 has been placed on record but there is no stamp of the post office on the said copy. Further, the postal receipt regarding telegram has also not been produced.

30. The workman has stated that he received letter dated 6-9-99 from the society. Later on he came to know that his name from the roll has been struck off. He has also stated that no notice or compensation in lieu of notice was given to him in compliance of the provision of Section 25-F of the I.D.Act. He has further stated that his name has been struck off without providing any opportunity of hearing to him. The society deliberately did not send letters at his permanent address. He has also stated that he did not receive letter Ex-M-44.

31. To Controvert above statement, the management witness Muniraj has stated that the workman

has acknowledge the receipt of the letter dated 21-9-99 and 20-10-99 sent by the society. In cross-examination he has admitted that no charge sheet was given. He has also admitted that no show cause notice was given and notice or compensation u/s 25-F was not given. He has also admitted that the receipts of the letters and telegram are with the society but the same have not been produced.

32. Indisputably, the name of the workman has been removed from the muster roll of the society w.e.f 20-10-99 vide letter dated 20-10-99 (M-46). The management witness has admitted this fact that prior to striking off the name of the workman from the roll, no show cause notice was served upon him. Thus, the action of the society was in violation of principle of natural justice.

33. Before striking off the name of the workman from the roll, admittedly, no enquiry was conducted for the unauthorized absence. Upon perusal of the management document Ex-M-27 pertaining to unauthorized absence in the year 1995, it reveals that earlier the workman had left the headquarter and remained absent unauthorisadly in the year 1994 but the society had taken a lenient view and allowed him to resume his duties despite letter dated 12-6-95 issued to him for treating him as 'voluntarily abandoned his service'. It further reveals that Assistant Manager reported that the workman was guilty of misconduct on account of prolonged absence but the Chief Manager allowed him to resume duties but at the same time directed to issue him charge sheet also. It also reveals that earlier unauthorized absence of the workman was treated as misconduct and directions were given to initiate enquiry against him. But in present case, the management has admitted that no enquiry was conducted for misconduct of alleged unauthorized absence before striking off the name of the workman from the rolls vide letter dated 20-10-99.

34. Apart from this, the striking off the name of the workman from the roll without any notice or compensation in lieu of notice attracts the provisions of Section 25-F of the I.D.Act also.

35. Section 2-S (OO) says that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action but does not include (a) voluntarily retirement (b) retirement on reaching the age of superannuation (bb) termination as a result of the non-renewal of the contract of employment (c) termination on the ground of continued ill-health.

36. In 1980(II) LLN (SC) 170, Hon 'ble Apex court has held that in the definition of the retrenchment in Section 2(OO) of the I.D.Act, if due weight is given to words "the termination by the employer of the service of a workman in any reason whatsoever" and if the words "for any reason whatsoever", are understood to mean what they plainly say, it is difficult to escape the conclusion that the expression "termination" must include every termination of the service of a workman by an act of the employer. In FGR 1978 (vol. 55) 210, Delhi Cloth and General Mills Co. Ltd. V/s Shambhu Nath Mukherji and ors., the name of the respondent therein was automatically off from the rolls by invoking the 'provisions of Standing Orders, Hon'ble Apex court held:

"Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(OO) of the Act. There is nothing to show that the provisions of Section 25-F (a) and (b) were complied with by the management in this case. The provisions of Section 25-F (a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid."

37. In view of the legal proposition laid down in decision supra striking off the name of the workman from the roll amounts to retrenchment and under Section 25-F of the I.D.Act notice or compensation in lieu of notice was to be given to him. The management witness has admitted this fact that no notice or compensation in lieu of notice was given to the workman at the time of striking off his name from the roll. Therefore, the above action of the management of the society in striking off the name from the roll of the society of the workman is in violation of Section 25-F of the Act also.

38. For the foregoing reasons recorded above, the action of the management in striking off the name of the workman from the roll w.e.f. 20-10-99 being in violation of Section 25-F of the I.D.Act as well as in violation of principle of natural justice, cannot be said to be justified and legal. The impugned order dated 20-10-99 is liable to be set aside and the workman is entitled to be reinstated in service. Having regards to the delay in raising the dispute and peculiar facts and circumstances of the case the interest of justice would be sub-served by reinstating the workman with 25% back wages only.

39. In the result, the reference is answered in affirmative in favour of the workman and it is held that the action of the management of the society in striking off the name of the workman from the roll w.e.f. 20-10-99 was unjustified and illegal. Resultantly, the workman is entitled to be reinstated in service with its continuity and with 25% back wages. The award is passed in these terms accordingly.

40. Award as above.

41. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 105/03 को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-42012/179/2002-आईआर(सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Jawahar Navodaya Vidyalaya, and their workman, received by the Central Government on 21-8-2012.

[No. L-42012/179/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/105/2003

Date : 20-07-2012

Party No.1 : The Principal
Jawahar Navodaya Vidyalaya
Bellora, Tah. Ghatanji,
Distt. Yavatmal (MS)

Versus

Party No. 2 : Shri Suresh Uddhav Pudke,
R/o. Ambedkar Nagar, Patipura,
Yavatmal (MS)

AWARD

(Dated: 20th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Jawahar Navadaya Vidhyalaya and their workman, Shri Suresh Pudke, for adjudication, as per letter No. L-42012/179/2002-IR (CM-II) dated 17-02-2003, with the following schedule:—

1. "Whether the action of the management in relation to Jawahar Navodaya Vidhyalaya, At-Bellora, Tah-Ghatanji, Distt. Yavatmal in terminating the services of Shri Suresh Uddhav Pudke, Mess Helper, on 01-07-1996 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, to what relief the workman is entitled?"

2. "Whether the action of the management in relation to Jawahar Navodaya Vidhyalaya, At Bellora, Tah-Ghatanji, Distt-Yavatmal in paying to the workman namely Shri Suresh Uddhav Pudke, Mess Helper, wages at the rate of Rs. 30 per day w.e.f. 08-07-1992 in deviation from the Govt. of India O.M.No.S-32021/16/36-WC(MW) dated 23-08-1988 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Pudke, ("the workman" in short), filed the statement of claim and the management of Jawahar Navodaya Vidhyalaya, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was employed in the post of Mess Assistant in Jawahar Navodaya Vidhyalaya, Belora (party no. 1) w.e.f. 08-07-1992 and from the date of his appointment on 08-07-1992, he worked with party no. 1 uninterruptedly and continuously, without any stigma till 01-07-1996, the date of his illegal termination and he was employed as driver (as mentioned in the statement of claim) on payment of Rs. 30 per day, where as, regular pay of the Mess Assistant in the organization of party no. 1 was Rs.950-1500 per month plus allowances as admissible from time to time in terms of Government of Indias' OM dated 23-08-1988 and from time to time, he raised this disparity of payment with the management and requested them to grant him regular wages as per the above mentioned OM dated 23-08-1988, but party no. 1 did not pay any heed to his plea and the party no. 1 abruptly and illegally terminated his services on 01-07-1996 and at the time of his termination, he had already completed 240 days of continuous service every year and also during the period of the preceding twelve months of the date of his termination and the party no. 1 did not give him one month's notice or one month's pay in lieu of the notice and retrenchment compensation as provided under section 25- F of the Act, while effecting the termination

and party no. 1 neither maintained nor published any seniority list of the employees of the category in which he was working and retained Kishan, Prakash Kale and Mohan Rathod, who were juniors to him and the action of party no. 1 was nothing short of violation of the provisions of section 25-G of the Act and the termination of his services was also in breach of the principles of natural justice, as before effecting the termination, he was not given the opportunity of being heard.

It is further pleaded by the workman that initially, under the advice of his counsel, he challenged the order of termination, by filing a complaint bearing ULPA No. 109/96 in the Labour Court, Yavatmal and although his complain was allowed, the party no. 1 filed a revision application, before the Industrial Court, Yavatmal, raising the question of jurisdiction of the Labour Court, so he had to withdraw the proceedings from the Labour Court and approached the ALC (C), Chandrapur for conciliation and as the conciliation failed, this reference has been made.

The workman has prayed for his reinstatement in service with full back wages and consequential benefits and to pay arrears of regular pay in terms of Govt. of India's OM in the matter.

3. The party no.1 in the written statement by denying all the allegations made in the statement of claim has pleaded inter-alia that the management runs a residential school and for running the residential school, a mess fund is created for which the students admitted in the school contribute and from the mess fund, the expenses for running the mess including the payment of wages of the employees engaged for running the mess is meted out and the workman was never appointed by it and he was never in its employment and there was no master and servant relationship between it and the workman and no junior to the workman is in service with it and the workman was only engaged as a mess assistant on daily wages basis as and when the necessity arose and whenever, the workman was engaged as a mess assistant (helper), he was paid from the mess fund and there is no sanctioned post against which, the workman was engaged and at present also, no sanctioned post is available. It is further pleaded by the party no.1 that the workman was never employed by it in the post of mess assistant and he did not work continuously from 08-07-1992 and at no point of time, the workman had raised disparity of payment as per Government of India's OM dated 23-08-1988 and the workman had not completed 240 days of continuous work with it and as the workman unconditionally withdrew the complaint from the Labour Court, he is precluded from raising the dispute by conciliation and the reference is liable to be answered in negative, since it is hit by principles of res judicata and estoppels.

4. Both the party besides placing reliance on documentary evidence, led oral evidence in support of their respective claims.

The workman has examined himself as a witness in support of his claim. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. He has also proved the certificate issued by the Principal of the School as Ext. W-1. However, in his cross-examination, the workman has admitted that no appointment letter was issued by the management in his favour for his engagement in the school and his name was not sponsored by the Employment Exchange and there was no interview for his engagement and he has not filed any document to show that he was working as mess assistant and he had never raised objection regarding payment of less wages to him, before the authority of the school and he did not raise objection regarding disparity of payment in writing and he cannot say the name of the junior, who was engaged by the authority of the school after termination of his services and he does not have any idea about the Government of India's instruction contained in OM dated 23-08-1988 and he did not receive any written order of termination.

5. Shri Prasant P. Hardas, the Art teacher of party no. 1 was examined as a witness on behalf of the party no.1. This witness has reiterated the facts mentioned in the written statement, in his examination-in-chief on affidavit. In his cross-examination, this witness has admitted that he was not working in the school in question from 1992 to 1996 and he has no personal knowledge about the working of the workman from 1992 to 1996 and the statement mentioning the days of engagement of the workman in the mess as given by the Principal is true.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was employed as a mess assistant on 08-07-1992 and it has been established by the document, Ext. W-1 that prior to the termination of the services of the workman in 1996, the workman had rendered uninterrupted and continuous service of 274 days and 262 days in 1994 and 1995 respectively and it has been established by cogent evidence that though the regular pay of mess assistant was Rs. 950-1500 per month plus allowances as admissible from time to time in terms of Government of India's OM dated 23-08-1988, only Rs. 30 was paid as daily wages to the workman and though the workman raised objection to such payment and to grant him regular pay of mess assistant, the party no. 1 did not pay any heed to the same and illegally and abruptly terminated his services on 01-07-1996, without compliance of the mandatory provisions of section 25-F of the Act and seniority list as required to be published under section 25-G of the Act was not published and as the termination of the workman from services was illegal, he is entitled to reinstate in service with continuity and full back wages.

In support of such contentions, reliance was placed by the learned advocate for the workman on the decisions reported in 2010(5) Mh. L.J 244 (Anoop Sharma Vs.

Executive Engineer, Public Health Division No. 1, Panipat), 2005 III CLR-106 (Jairaj N. Shetty Vs. Union of India) and 2004 SCC (L & S)-46 (U.P. Drugs and Pharmaceuticals Co. Ltd.).

7. Per Contra, it was submitted by the learned advocate for party no. 1 that the basic contention of the workman is regarding non-compliance of the mandatory provisions of section 25-F of the Act, as he had worked for 240 days uninterruptedly and to prove the same, he has placed reliance on Ext. W-1, but on perusal of Ext. W-1, it can be found that the workman did not work for 240 days in the preceding 12 calendar months of the date of his alleged termination i.e. 01-07-1996, hence section 25-F has no application and so for the contention regarding breach of section 25-G of the Act is concerned, the workman had admitted in his cross-examination that he does not know if any junior was engaged in the school and the workman was engaged as mess assistant in the mess on daily wages and thus, the workman failed to prove about violation of section 25-G of the Act and the evidence of the witness for the management has not been shattered in the cross-examination and it is clear from the evidence that the workman had not under gone the selection process and there is no sanctioned post of mess assistant and as such, the workman is not entitled to reinstatement or any other relief.

In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in 2006 SCC-1 (Secretary State of Karnataka Vs. Uma Devi), AIR 1999 SC-376 (Union of India Vs. Chhotelal) and 2008 SCC-65 (State of Haryana Vs. Navneet).

So, keeping in view, the principles enunciated by the Hon'ble Apex court in the decisions cited by the learned advocates for the parties, the present case in hand is to be considered.

8. Perused the record including the pleadings of the parties, documents produced and the oral evidence led by the parties. From the materials on record, it is found that the workman was engaged on daily wages basis as mess assistant and he was not sponsored by the Employment Exchange for his engagement and there was also no interview for his engagement. The workman has admitted such facts in his cross-examination. So it is clear from the evidence on record that the engagement of the workman was not in accordance with the Rules of recruitment.

9. The workman has claimed that he worked with the party no. 1 as a mess assistant from 8-7-92 continuously till his illegal termination from services w.e.f. 1-7-96. Party no. 1 has denied such claim of the workman. It is well settled that for application of the provisions of section 25-F of the Act, it is necessary for the workman to prove that in fact he had worked for 240 days in the preceding 12 calendar months of the date of the alleged termination. In view of the stands taken by the parties, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court in regard to the burden of proof and evidence required to prove the same.

10. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25- B"

11. In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act, 1947 (14 of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

12. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) nave held that:

"Industrial Disputes Act (14 of 1947- S.25- F, 10-Retrenchment Compensation-Termination of services without payment of—Dispute referred to Tribunal—Case of workman/claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management—Onus lies upon claimant to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

13. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC—100 (Reserve Bank of India Vs. S.Mani) have held that:—

"Industrial Disputes Act, 1947—Ss.25-F, 2S-N, 25-B and II-240 days' continuous Service—Onus and burden of proof with respect to—Evidence sufficient to discharge—Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service/ Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden—Other substantive evidence needs to be adduced to prove 240 days' continuous service—Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court of Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

14. In this case, besides his own evidence, the workman has placed reliance on the document, Ext.W-I. Ext.W-I is the copy of the certificate granted by the Principal of party no. 1 regarding the working days of the workman. The witness examined on behalf of the party no. 1 has admitted the correctness of Ext.W-I.

On perusal of Ext.W-I, it is found that there is nothing in the same to show that the workman worked after March, 1996 with party no. 1. It is also found from Ext.W-I that the workman worked for 227 days in the preceding 12 months of 01-07-1996 and for 240 days as claimed by him. From the evidence on record, it is found that the workman has failed to prove that he had worked for 240 days in the preceding 12 calendar months of 01-07-1996. Hence the provisions of section 25- F of the Act are not applicable to this case.

15. Though, the workman in the statement of claim has mentioned that Kishan, Prakash Kale and Mohan Rathod, who were juniors to him, were retained by party no. 1, while terminating his services, nothing has been mentioned in the statement of claim or in the evidence of the workman as to whether anybody else was working with the party no. 1 in the same category, in which the workman was working, necessitating the publication of the seniority list by party no. 1. Moreover, the workman in his cross-examination has stated that he cannot say the name of the junior, who was engaged by party no. 1 after termination of his services. Hence, it cannot be said that there was violation of section 2S-G of the Act by party no. 1.

16. It has been proved that the workman was engaged on daily wages basis. His engagement was not against any regular post of mess assistant and as such, the workman was not entitled to get the pay scale prescribed for the regular mess assistant. Hence, it is ordered:—

ORDER

The action of the management in relation to Jawaha Navodaya Vidhyalaya, At-Bellora, Tah-Ghatanji, Distt. Yavatmal in terminating the services of Shri Suresh Uddhav Pudke, Mess Helper, on 01-07-1996 without complying with the provisions of Industrial Disputes Act, 1947 is legal & justified.

The action of the management in relation to Jawahar Navodaya Vidhyalaya, At Bellora, Tah-Ghatanji, Distt-Yavatmal in paying to the workman namely Shri Suresh Uddhav Pudke, Mess Helper, wages at the rate of Rs. 30 per day w.e.f. 08-07-1992 in deviation from the Govt. of India O.M.No. S-32021/16/36-WC(MW) dated 23-08-1988 is legal and justified.

The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2862.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 33/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/182/2006-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2862.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 33/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Rajur Colliery of WCL and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/182/2006-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT/-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/33/2007 Date : 25-07-2012

Party No. 1 : The Sub Area Manager,
Rajur Colliery of WCL,
Wani North Area,
Post : Rajur, Tah. Wani
Distt. Yavatmal (MS)

Versus

Party No. 2 : The Secretary,
Lal Zanda Coal Mines Mazdoor Union,
(CITU), Br. Rajur Sub Area,
R/o & PO : Rajur, Tah. Wani,
Distt. Yavatmal (MS)

AWARD

(Dated : 25th July, 2012

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and the dependent of the deceased workman, Late Shankar Pidurkar, for adjudication, as per letter No. L-22012/182/2006-IR (CM-II) dated 14-06-2007, with the following schedule :—

"Whether the action of the management of in not registering the names of the dependent of Late Shankar Pidurkar in the live Roster is legal & justified ? If not, to what relief is the dependent is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zanda Coal Mine Mazdoor Union (CITU)", ("the union" in short) filed the statement of claim on behalf of the dependent of the deceased workman and the management of WCL, ("Party No.1" in short) filed Its written statement

The case as presented in the statement of claim by the union is that Late Shankar Kawdu Pidurkar was working as a permanent loader at Rajur Colliery and he died on 01-04-2003 and his wife Sunita Shankar had predeceased him, who died on 17-04-2002 and Shankar Kawdu Pidurkar died leaving behind him, his, father and mother, namely, Kawdu Govinda Pidurkar and Saman Kawdu Pidurkar respectively and his daughter and two sons, namely, Ku. Sapna Shankar Pidurkar and Vaibhav Shankar Pidurkar and Suraj Shankar Pidurkar, whose dates of birth are 07-04-1992, 05-05-1995 and 07-09-1997 respectively and Sapna Shankar and Vaibhav Shankar, the dependents son and daughter of Shankar Kawdu Pidurkar submitted an application to Sub-Area Manager, Rajur Sub-Area, WCL to keep the name of either of them in the live Roster and after attaining eighteen years of age to give employment according to his/her qualification and to pay monetary compensation to the family till then, but party no.1 neither kept the name of the son of Shankar in the live Roster nor paid any monetary compensation and according to clause 9.3.1 of Chapter 9 of NCWA VI, there is provision for giving employment to one of the dependents of a workman, who dies while in service and in clauses 9.4.0 and 9.5.0 there are provisions to keep the name of the dependent of the deceased workman in the live roster, in case his age is 10 years or more or and on his attaining the age of 18 years to provide him employment according to his qualification to give monetary compensation to him till then and by letter dated 21-02-2005, party no. 1 denied to keep the name of the dependent son or daughter of Late Shankar Pidurkar in the live roster and to give employment on attaining the age of 18 years and till then to give monetary compensation, even though the age of Vaibhav is more than 10 years and the age of Sapna is more than 13 years and even though party no. 1 has kept the names of the dependents of number of deceased workmen such as (i) Rohit Niranjan-age 10 years, the dependent son of late Niranjan Umre, (ii) Mohammad Yasim, age 10 years, the dependent son of Late Nasimuddin Sirajuddin, (iii) Yashvanta, age 13 years, the dependent son of Ramnath Choudhary and (iv) Ganesh Nagpure, age 11 years, the dependent son of Khushal Nagpure in the live roster register and has issued letter to provide monetary compensation of Rs. 3000 per month till

their attaining the age of 18 years and the action of the party no. 1 is illegal.

The union has prayed to direct the party no. 1 to keep the name of Vaibhav Shankar, the dependent son of Late Shankar Pidurkar in the live roster register till his attaining the age of 18 years and on his attaining 18 years of age to give employment to him and till then to give monetary allowance of Rs. 3000 per month.

3. The party no. 1 in its written statement has pleaded inter-alia that the service conditions of its employees are governed by the National Coal Wage Agreements (NCWA), signed between the employers and representatives of the unions of the Naitonal level, involving all the subsidiaries of Coal India Limited and Shankar Kawdu Pidurkar, who was working as a loader died on 01-04-2003 and his wife had predeceased him and according to the information available with Shankar Kawdu died leaving behind him his daughter, Sapna Shankar Pidurkar, aged 11 years (date of birth 07-04-1992) and two sons, namely, Vaibhav Shankar Pidurkar, aged 8 years (date of birth 05-05-1995) and Suraj Shankar Pidurkar, aged 6 years (date of birth 07-09-1997) as his successors and as the children of the deceased workman, Shankar were minors, Shankar's father requested the management to keep either the name of the daughter or one of the sons of Late Shankar Kawdu in the live roster, for the purpose of further employment on suitable post and the subject matter of keeping the name of minor dependents of the deceased employee on the live roster register had been settled and incorporated in the NCWA VI and clause 9.5.0 of NCWA VI provides that, " In case of death, if the female dependent is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs. 3000 per month or employment and in case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment is offered and the made dependent of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications, when he attains the age of 18 years and during the period the male dependent is on live roster, the female dependent will be paid monetary compensation as per rates at para (i) and (ii) of clause 9.5.0 and while considering the application, it was found that Vaibhav was below 12 years of age and as such he was not entitled to be kept in live roster as per clause 9.5.0 (iii) of NCWA VI and since, the name of Viabhav could not be kept on live roster, the female dependent was also not entitled for any compensation and as such, the request of the dependents of the deceased workman could be allowed and the said decision was taken by the competent authority" after due consideration of the provisions and facts and situation and therefore, the reference is to be answered in favour of the management.

It is further pleaded by the party no. 1 that the matter does not constitute any industrial dispute as defined under section 2K of the Act, since the aggrieved persons are not members of the union and there is no proper evidence to establish that the union espoused and championed the said dispute and on this ground the reference is liable to be rejected and as the dispute is in contravention of clauses 13.2.0 and 13.3.0 of Chapter XIII of NCWA VI, the same is ab-initio void and the claim is liable to be rejected.

4. The petitioner besides placing reliance on documentary evidence adduced oral evidence in support of the claims made in the statement of claim. No oral evidence has been adduced on behalf of the party no. 1. One Basant Laxman Patil, the General Secretary of the union, "Lal Zanda Coal Mines Mazdoor Union" has been examined as a witness on behalf of the petitioner. In the examination-in-chief, which is on affidavit, this witness has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, this witness has stated that Late Shankar Kawdu Pidurkar died on 01-04-2003 and at the time of death of Shankar, the age of his son Vaibhav was nine years and he has filed the zerox copy of page nos. 16 and 17 of the NCWA VI and in page no. 17, in sub-clause. III of clause 9.5.0, in second line, the figure " 12" has been corrected by him as "10" and as the management subsequently lowered down the age from 12 to 10, he corrected the said age and he has not filed any document to show that the management had lowered down the age from 12 years to 10 years in sub-clause III of clause 9.5.0,

5. At the time of argument, it was submitted by the learned advocate for the union that there is no dispute regarding the death of the workman, Shankar Kawdu Pidurkar on 01-04-2003, while in service and about the death of the wife of Shankar prior to him and that deceased workman Shankar died leaving behind his two sons, Vaibhav and Suraj and daughter, Suman, whose dates of birth are 05-05-1995, 07-09.-1997 and 07-04-1992 respectively and as per clauses 9.3.1, 9.4.0 and 9.5.0 of Chapter-9 of the VIth NCWA, the party no. 1 was duty bound to keep the name of Vaibhav in the live roster till he attains the age of 18 years, and there after he is to be given employment in commensurate with his skill and qualifications and to pay monetary compensation to Suman, the female dependent till then and party no. 1 has kept the names of Rohit Niranjan, aged about 10 years, Md. Yasim, aged about 10 years and Ganesh Nagpure in live roster and is paying monetary compensation to the respective female dependent and party no. 1 has not done so, only in this case, which is quite illegal and as such, the reference is to be answered in favour of the petitioner.

6. Per contra, it was submitted by the learned advocate for party no. 1 that party no. 1 duly considered the case of the successor of Late workman Shankar Kawdu Pidurkar and was found that the successors of Late Shankar are not entitled for the benefits under clauses 9.5.0, their application was rejected and there was no illegality in the action of the party no. 1 and therefore, the reference is required to be answered in negative.

7. It is necessary to mention here that there is no dispute about the death of the workman, Shankar Kawdu Pidurkar, and about the dates of birth of the two sons and daughter of Late Shankar Pidurkar.

8. The claim of the union is based on clauses 9.3. 1, 9.4.0 and 9.5.0 of Chapter 9 of the VIth NCW A. So, for better appreciation of the matter, I think it proper to quote the said clauses, which are as follows:—

9.3.1 Employment would be provided to one dependent of workers who are disabled permanently and also those who die while in service.

9.4.0 Employment to one dependent of a worker who is permanently disabled in his place.

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In caw of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he / she is upto the age of 58 years. The term 'general physical debility would mean deficiency of a workman due to any disease or other health reason leading to his/her duties regularly and / or efficiently.

(iii) The dependent for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependent is available for employment, brother, widowed daughter, widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earning of the employees may be considered.

In so far as female dependents are concerned, their employment would be governed by the provisions of clause 9.5.0.

iv) The dependents to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.

9.5.0 Employment/Monetary compensation to female dependent.

Provision of employment/monetary compensation to female dependents of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under : —

(i) In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 4000 per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under Cla:use 9.4.0, if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3000 per month or employment.

(iii) In case of death either in mine accident of for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependent is on live roster, the female dependent will be paid monetary compensation as per rates in paras (i) & (ii) above. This will be effective from 01-01-2000.

(iv) Monetary compensation, whenever applicable would be paid till the female dependent attains the age of 60 years.

(v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standarisation Committee & finalized;

It is found from sub-clause III of clause 9.5.0 that it provides to keep the name of a male dependent of the deceased or medically unfit workman in the live roster, if the age of the male dependent is 12 years or more. It does not provide to keep the name of the female dependent in the live roster. In this case, on verification of the date of birth of Vaibhav and making calculation of his age with reference to the date of birth, it is found that his age was below ten years at the time of the date of death of his father. So, it is clear that the provisions of clause 9.5.0 are not applicable to his case and as per the said provisions, his name could not have been kept in the live roster. Though copies of the order passed by party no.1 to keep the names of Md. Yasim, Rohit Niranjan Umre, Yaswant in the live roster have been filed by the union, the same are of no help to their claim, as in none of the orders, the age of the persons, whose names are to be kept in the live roster has been mentioned.

In view of the materials on record and the discussions made above, it is found that party no.1 did not commit any

illegality in not keeping the name of Vaibhav in the live roster and in not paying any monetary compensation to the female dependent. Hence, it is ordered :—

ORDER

The action of the management of in not registering the names of the dependent of Late Shankar Pidurkar in the live Roster is legal & justified. The dependents of Late Shankar Kawdu Pidurkar are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2863.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (आईडी संख्या 12/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/73/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. 12/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/73/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/12/2005 Date : 23-07-2012

Party No. 1 : The General Manager,
Western Coalfields Ltd.,
Pench Area, PO-Parasia,
Distt. Chhindwara (MP)

Versus

Petitioner : Shri G. N. Shah, Chief General Secretary,
Madhya Pradesh Koyala
Khadan Mazdoor Panchayat,
PO-Junnardeo,
Distt. Chhindwara (MP)

AWARD

(Dated : 23rd July, 2012

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and Shri Ravi Kumar, the son of deceased workman, Late Puranlal for adjudication, as per letter No. L-22012/73/2004-IR (CM-II) dated 10-01-2005, with the following schedule :—

क्या मुख्य महाप्रबंधक, वेस्टर्न कोलफील्ड लिमिटेड पेंच एरिया परासिय जिला छिन्दवाड़ा म.प्र. प्रबंधन द्वारा मृतक कर्मकार स्व. पूरनलाल, एस.बी. अटेन्डेंट, रावनवाड़ा खास कालरी के आश्रित पुत्र री रविकुमार की अनुकंपा नियुक्ति न दिये जाने की मांग न्यायोचित है? यदि नहीं तो संबंधित कर्मचारी किस अनुतोष का हकदार है ?

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the petitioner, Shri Ravi Kumar, ("the petitioner" in short) filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed its written statement.

The case of the petitioner as presented in the statement of claim is that he is the son of late Puranlal, who was working with the party no. 1 as a S.B. Attendant at Barkuhi Hospital, Pench Area and his father expired on 26-11-1997, while in service and after the death of his father, his mother, Smt. Draupadibai made an application on 12-06-1998 to the party no. 1 to give him (petitioner) employment on compassionate ground, but the Mines Manager of Rawanwara Khas Colliery, vide his letter dated 26-06-1998 intimated his mother about having discrepancies in the option form submitted by Late Heeralal and the application submitted by his mother and by the said letter, his mother was also advised to nominate one of her three major sons for appointment on compassionate ground or for monetary compensation of Rs. 2000 per month in lieu of compassionate appointment and in response to the letter dated 26-06-1998, his mother made a representation to the Mines Manager, Rawanwara Khas Colliery on 18-07-1998 clarifying the factual position that Heeralal was not her husband, but Heeralal was her father-in-law and her father- in-law was never in service and her husband had filed service particulars in 1987, showing her (Draupadi) as his wife, son Ravi Yadav and daughter as his family members and after submissions of such service particulars by her husband, two sons, namely Rajesh and Raju were born to her through her husband, Late Puranlal and such family particulars were given by his mother alongwith the certificate granted by the Sarpanch of the Grampanchayat, Dighawani, under whose jurisdiction she was residing and he himself (the petitioner) also filed an affidavit to that effect. The further case of the petitioner is that he is a pluck matric and he is major and the entire family is dependent upon him and he approached the party no.1 for compassionate appointment, but his request was turned down and party no.1, vide letter dated 26-04-2001

had regretted to consider his case and as such, he raised an industrial dispute before the ALC and upon failure of the conciliation proceedings, failure report was submitted by the ALC to the Central Government and the Government has referred the dispute to this Tribunal for adjudication.

The petitioner has prayed for a direction to the party no.1to appoint him on a suitable post on compassionate ground.

3. The party no.1 in its written statement has pleaded inter- alia that the industrial dispute was raised by the union, Madhya Pradesh Koyala Khadan Mazdoor Panchayat and the party to the dispute was the union and not any individual and as such, the individual i.e. the aggrieved person has no locus standi to sign and file the statement of claim, but in this case, the statement of claim has been filed by Ravi Kumar S/o. Puranlal and since Ravi Kumar is not a party to the dispute as per the reference made by the Government, he has no locus standi to sign and file the statement of claim and as such, the statement claim is void and not maintainable and is liable be to be rejected and Puranlal S/o. Hiralal was working as a S.B. Attendent and he died on 26-11-1997 and after the death of Puranlal , his wife, Draupadi Bai applied for providing employment to her son, Ravi Kumar on compassionate ground under the NCWA and sanction for providing employment under NCWA has to be obtained from Headquarters of the company and accordingly, the case of Ravi Kumar was sent to the Headquarters for approval and his case was examined carefully on the basis of the relevant records/ service particulars available with the company and it was noticed that there were serious discrepancies in the particulars furnished by Draupadi with regard to Ravi Kumar and in the declaration given by Late Puranlal in service excerpts and under LLTC scheme of NCWA agreement, which are binding as service conditions of all workmen/ employees of coal industry and basing on such verification, the case of employment of Ravi Kumar was not accepted by the competent authority as communicated to the Area Manager by the Headquarter vide letter dated 225/ 26-04-2001 and while disallowing the claims, a copy of the aforesaid communication was sent to Draupadi bai. It is further pleaded by party no. 1 that for claiming LTC in line of RRF, Puranlal had given the particulars of his family members on 14-04-1986, in which the name of Ravi was shown as son amongst other and the age of Ravi was shown as 20 years and the declaration was signed by Puranlal and counter signed by the colliery authorities and in the service excerpts signed by Late Puranlal on 26-07-1987 in accordance with NCWA, the age of Ravi Kumar was given as five years and according to the documents submitted in support of the claim for employment of Ravi Kumar, his age was mentioned much less than the declaration given by his father during his, life time while in employment and there was also variation in the actual name/surname etc. of Ravi Kumar in different records and the employers are supposed to provide employment to the dependent under NCW A, only in such cases, which are free from doubts and a person of doubtful identity is not entitled for any claim under law and in view of such facts and circumstances, the claim of Ravi Kumar was rightly rejected by it.

4. Besides placing reliance on documentary evidence, the petitioner led oral evidence in support of his Claims. The petitioner and his mother, Draupadi examined themselves as witnesses in support of the claim. The examination-in-chief of both the witnesses is on affidavit and both of them in their respective examination-in-chief have reiterated the facts mentioned in the statement of claim.

In his cross-examination, Ravi Kumar has admitted that his father had submitted an option form for availing LTC in line of RRF and in that option form, his age was mentioned as 20 years as on 01-12-1983 and he cannot say if his father had submitted any application for correction of his age, as mentioned in the said option form. Ravi has further admitted that his age as mentioned in the application and his age as mentioned in the option form submitted by his father are different.

Draupadi, in her cross-examination has stated that she has no knowledge about the age of Ravi as mentioned by her husband in the LLRC form submitted on 14-04-1986 and she does not know about the entries furnished by her husband in the service excerpts form. She has also admitted that management had intimated them that due to some discrepancies regarding the age, name and other particulars of Ravi Kumar in the form submitted by her husband, Puranlal and the application submitted by her, Ravi Kumar could not be given employment.

5. No oral evidence has been adduced on behalf of the party No. 1.

6. During the course of argument, it was submitted by the learned advocate for the party no. 1 that it is not disputed that workman Puranlal died on 26-11-1997 while in service and Draupadi, wife of Puranlal filed an application on 12-08-1998 to give compassionate appointment to her eldest son, Ravi Kumar and Ravi Kumar is entitled for such compassionate appointment in view of NCWA and inspite of filing of authenticated documents regarding the age of Ravi and other particulars of the family members, party no. 1 rejected the application, without any valid ground and as such Ravi Kumar is entitled for compassionate appointment and till the appointment of Ravi Kumar, the wife of Puranlal is entitled for monetary compensation.

7. Per contra, it was submitted by the learned advocate for the party no. 1 that though the dispute was raised by the union, before the A.L.C., the statement of claim has not been filed by the union, but the same has been filed by Ravi Kumar, who was not a party to the dispute and as such, the very basis of the claim is void ab-initio and not

maintainable and Ravi Kumar has not obtained any authority from the union to file the statement of claim and Puranlal died on 26-11-1997 and on the date of his death, N.C.W.A. No. VI was in operation, which was effective from 01-07-1996 to 30-06-2001 and as per clause 9.3 to 9.3.4 and 9.5.0 (i)(ii)(iii) of the said N.C.W.A., there were provisions to provide employment to the eligible dependents and employment and/or compensation to the female dependents and in the form to avail LTC, Puranmal had mentioned the age of his son, Ravi Kumar as 20 years on 01-12-1983 and till his death, Puranlal did not apply for correction of the said date of birth of Ravi Kumar and according to the school leaving certificate filed by Ravi Kumar, his date of birth is 20-07-1980 and on the date of death of Puranlal, when his case was examined in the light of the above facts and provisions of Mines Act, 1952, he was found not suitable for employment as he was below 18 years of age and his name could not be kept in live roaster as per clause 9.5.0 (iii), as the said clause was effective from 01-01-2000 and the benefit could not be given retrospectively w.e.f. 26-11-1997 and the identity of Ravi Kumar is doubtful due to the controversy of his age as given by his late father in the declaration and the age proof produced by Ravi kumar and there was also discrepancies in his name in different documents and in view of the contradictory stand and discrepancies in the records and documents, the party no. 1 rightly rejected the claim of appointment of Ravi Kumar.

8. So far the submission made by the learned advocate for party no. 1 regarding non maintainability of the reference due to filing of the statement of claim by Ravi Kumar and not by the union is concerned, it is found that the union had raised the dispute before the ALC on behalf of Ravi Kumar. Ravi Kumar himself is the disputant. So, there is no illegality in filing the statement of claim by himself. This type of cases is of exceptional in nature. When the dispute was raised by the union at the beginning and reference was made by the Government, filing of the statement of claim by the disputant would by no means extinguish the industrial dispute within the meaning of Section 2 A, of the Act, which would still continue to persist. Hence, I find no force in the contention raised by the learned advocate for the party no. 1.

9. The learned advocate for the party no.1 during the course of argument, made submissions that as the age of Ravi Kumar was below 18 years, as per the provision of Mines Act, 1952, he was found not suitable for employment and the name of Ravi Kumar could not be kept in the live roster under clause 9.5.0 (iii) as the same became effective w.e.f. 01-01-2000, but such submissions cannot be taken into consideration, as such pleadings were not there in the written statement and no evidence was adduced in respect of the same. Moreover, there was also provision in NCWA V (Clause 9.5.0) keep the name of a minor dependant in the live roaster. As per clause 9.5.0 of NCWA V, party no.1 was required to keep the name of Ravi Kumar in the live roaster till his attaining the age of 18 years and then to give him suitable employment and till then to pay monetary compensation to the female dependent.

10. From the documents, Ext.W-1, it is found that the wife of Puranlal had filed an application for employment on 12-06-1998 and party no.1, rejected her request for employment illegally, though there was clear provision in the NCWA V and VI for providing employment or monetary compensation to the wife of the workman. It is also found that many wrong information were there in Ext. W-1. It is clear from the materials on record, in the service record, that the deceased workman, Puranlal had mentioned the age of his son, Ravi Kumar as five years as on 26-07-1987. The party no. 1 has also admitted the said fact in paragraph 'g' of the written statement. The information given by deceased Puranlal in the service excerpts on 26-07-1987 was subsequent to the declaration for availing LTC and inspite of the discrepancies in the declaration made by him given by Puranlal for availing LTC and in the service excerpts submitted by him, party no.1 did not take any action and accepted the information given in the service excerpts and as such, there is no force in the contention raised on behalf the party no.1 that Puranlal did not file any application for correction of the age of Ravi. Moreover, as per Ext.W-II, Draupadi Bai, wife of deceased workman explained the reasons for the discrepancies in her application and the information given by her husband and that there was no major discrepancy in both the information, but party no.1 did not consider the same and also the documents in the right perspective and rejected the application for employment of Ravi Kumar on untenable ground. It is clear from the materials on record that Ravi Kumar is entitled to get the benefit of employment as per the provisions of clause 9.5.0 iii of NCWA. Hence, it is ordered :—

ORDER

The action of the Management of the Chief General Manager, Pench Area, Distt. Chhindwara (MP) for not accepting the demand of compassionate appointment of Shri Ravi Kumar, son of deceased workman Late Puranlal, S.B. Attendent, Rawanwara Khas, Colliery is unjustified and illegal. Ravi Kumar is entitled to be employed as per the provision of clause 9.5.0 (iii) of NCWA.

The party no. 1 is directed to give employment to Ravi Kumar commensurate to his skill and qualification within one month of the notification of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल.

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (आईडी संख्या 10/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/72/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. 10/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/72/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

Case No. CGIT/NGP/10/2005

Dated 27th July, 2012

Advocate for the management is present. The workman is also present and files an application supported with affidavit stating that he doesn't want to proceed with the case and wants to withdraw the same as no dispute is in existence. Copy is served on the advocate for the management. Heard. The petition is allowed. Put later on for orders.

Party No. 1 The Chief General Manager, Western Coalfields Limited, Pench Area, PO : Parasia, Distt. Chhindwara, (MP)

V/s

Party No. 2 Shri Prayag Modi, Joint General Secretary, Bharti Koyala Khadan Mazdoor Sangh, (MP)(BMS), Viswakarma Bhawan, PO: Parasia, Distt. Chhindwara (MP).

ORDER

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Chotelal, for adjudication, as per letter No. L-22012/72/2004-IR (CM-II) dated 04-01-2005, with the following schedule :—

"Whether the action of the management through the Chief General Manager, WCL, Pench Area (Parasia), Distt. Chhindwara (MP) in mentioning the date of birth of Shri Chotelal S/o. Ramdulare, Mining Sirdar, Mahadevpuri Mines as 01-04-1950 instead of 01-12-1956 in the service records is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Chotelal, ("the workman" in short) through his union, "Bhartiya Koyala Khadan Mazdoor Sangh (BMS)" , ("the union" in short) filed the statement of claim and the management of WCL, ("party no. 1 " in short) filed the written statement.

3. In the statement of claim it was pleaded that though the actual date of birth of the workman as per the school leaving certificate and so also the Mining Sirdar Certificate is 01-12-1956, in the service records, his date of birth was wrongly recorded as 01-01-1950 instead of 01-12-1956 and as such, it is necessary to change the date of birth of the workman to 01-12-1956 instead of 01-12-1950.

4. The management resisted the claim of the workman on the ground of raising the dispute at a belated stage and that as per the documents of the management, the age of the workman as mentioned as 24 years as on 01-01-1974 and accordingly, the date of birth of the workman was recorded as 01-01-1950 and the date of birth of the workman was rightly recorded in the official records.

5. On 27-07-2012, the workman filed an application supported with affidavit stating that he doesn't want to proceed with the dispute and wants to withdraw the case, as no dispute is in existence. The copy of application was served on the advocate for the management, who made endorsement of 'no objection' on the application itself. As the workman doesn't want to proceed with the case, it is necessary to pass a "no dispute" award. Hence, it is ordered :-

ORDER

As no dispute is in existence as per the workman, a "no dispute" award is passed and the workman is not entitled to any relief. The application filed by the workman alongwith the affidavit is made part of the award.

The workman files an application for return of the documents filed by him. Heard. As a "no dispute" award has already been passed, basing on the application filed by the workman not to proceed with the case, the application is allowed. Return the documents filed by him to the workman after substitution of the same by certified copies.

J. P. CHAND, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2865.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 11/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/252/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2865 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/252/2005-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/11/2007 Date : 28-05-2012

Party No. 1 The Chief General Manager,
Pench Area of WCL, PO : Parasia,
Distt. Chhindwara (M.P.)

V/s

Party No. 2 The General Secretary,
SKMS (AITUC), Central Office,
Iklehra, Distt. Chhindwara (M.P.)

AWARD

(Dated : 28th May, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Dinesh Kumar, for adjudication, as per letter No. L-22012/252/2005-IR (CM-II) dated 27-10-2005, with the following schedule :—

> "Whether the action of the management of WCL in dismissing Shri Dinesh Kumar from services w.e.f. 08-11-2004 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Dinesh Kumar ("the workman" in short) through his union, the SKMS (AITUC) ("the union" in short) filed the statement of claim and the management of WCL, Pench Area ("party no. 1 " in short) filed the written statement.

3. The case of the workman is that, while he was working as E.P. Fitter in Thesgora Underground Mine, on 06-03-2003, a charge-sheet was submitted against him and he submitted his explanation to the said charge sheet. It is further pleaded by the workman that he was ill and he had intimated about the same to the management by registry post and he was undergoing treatment in the Government hospital and in the years 2003 and 2004, he was ill and he had intimated about the same to the management and on 30-10-2003, he was allowed to join duties and he was attending departmental inquiry regularly besides performing his duties.and intimating the management by submitting applications, whenever he was falling ill and the inquiry was completed by the management, keeping him in darkness and even though, he produced documents regarding his illness and though he was not remaining absent deliberately and the higher authority had suggested to demote him one grade, but the Sub Area Manager did not agree with such suggestions and passed orders for termination of his services. Prayer has been made to set aside the departmental proceedings and to reinstate the workman in service with continuity and full back wages.

4. The Party No. 1 in its written statement has pleaded inter alia that the workman was working in Thesgora U/G Mine and he became very irregular in his work and frequently remained absent from his duty unauthorizedly and without any sanctioned leave and as he was a skilled worker, his unauthorized absence was causing serious disturbance in the normal work of the mine and during the entire year of 2002, and up to February, 2003, he had worked for 88 days and 24 days respectively and as the absence of the workman had become regular and repetitive in nature, charge-sheet bearing no. 2003/311 dated 06-03-2003 was issued against him containing the details of his absence and number of days he had worked in the relevant months and he was asked to submit his explanation within 3 days of receipt of the charge-sheet and as the workman did not submit any reply, the inquiry was constituted against him and M.A. Khan was appointed as the Inquiry Officer and the workman did not protest either against constitution of the inquiry or appointment of the Inquiry Officer and the Inquiry Officer fixed the inquiry to 08-11-2003 and the workman received the intimation of the same and in the meanwhile, the workman submitted a belated reply to the charge-sheet stating that his health was not good and his hand was twisted, for which he got himself treated privately and as he has become fit, he should be allowed to join duty, but he did not submit any medical certificate in support of his illness and the workman did not attend the inquiry on 08-11-2003 and prayed for adjournment by sending a letter and the inquiry was fixed to 25-03-2004 but on that date also, the workman did not attend the inquiry, so the inquiry was deferred to 03-04-2004 and the workman was intimated about the said date by the Inquiry Officer

vide his letter dated 26-03-2004 and the workman received the said letter and as the workman did not attend the inquiry on 03-04-2004 also, the Inquiry Officer proceeded with the inquiry ex-parte against him and during the course of the inquiry, the statement of the management representative was recorded and the documents were filed in support of charges and the inquiry was closed and the Inquiry Officer submitted his report to the Suprintendent of Mines along with the proceedings of the inquiry and the Inquiry Officer after analyzing the evidence adduced before him held the workman guilty of the charges and the copy of the inquiry report was sent to the workman, vide letter dated 29-06-2004, asking him to submit his comments on the same within 15 days and the workman did not submit his reply and therefore, considering the seriousness of the misconduct and the past record of the workman, his services were terminated vide letter no. 4/541 dated 08-11-2004, after obtaining approval of the Competent Authority and the workman did not file any appeal against the order of imposition of punishment and the departmental inquiry held against the workman is just, fair and proper and the punishment of termination from service is proportionate to the charges leveled against him. It is further pleaded by the Party No.1 that the workman had not informed about his alleged sickness to the management nor he had obtained leave and he was allowed on duty pending inquiry and the workman did not participate in the inquiry even though he had received the notices and he deliberately avoided to attend the inquiry and as the workman did not attend the inquiry, there was no question of producing proof in support of his claim and the Sub Area Manager did not agree with the recommendation of punishment made by the Mines Manager and recorded reasons for awarding the punishment of termination and obtained the approval of the C.G.M. for the same, after which, the workman was terminated and the workman is not entitled for any relief.

5. As this is a case of termination of services of the workman, after holding of a departmental enquiry, the validity of the departmental enquiry was taken up as a preliminary 4 issue for consideration and as per order dated 17-08-2011, the departmental enquiry conducted against the workman was held to be proper, legal and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the union representative that the workman had intimated the management regarding his illness and remaining absent for such reason and the enquiry was completed by Party No.1 keeping the workman in darkness about such enquiry and the punishment imposed against the workman is quite disproportionate in comparison to the minor misconduct committed by him. However, at the cost of repetition, it is to be mentioned here that the departmental enquiry conducted against the workman has already been held to be legal, proper and accordance with the principles of natural justice. Hence, there is no scope to consider the submission made by the union representative again in that regard.

7. On the other hand, it was submitted by the management representative that at no stage, the union has challenged about the perversity of the findings of the Enquiry Officer or the quantum of punishment and on that ground alone, the findings of the Enquiry Officer can be held to be not perverse and otherwise also, the Enquiry Officer has based his findings on the evidence adduced in the enquiry and his report is not contrary to the evidence on record and as such, the findings are not perverse. It was further submitted that commission of grave misconduct by the workman has been proved in a properly held departmental enquiry and the punishment imposed against the workman cannot be said to be shockingly disproportionate and therefore, there is no scope to interfere with the punishment.

In support of such contentions, reliance has been placed on the decisions reported in AIR 1970 SC-1334 (M/s. Perry & Co. Ltd. Vs the Labour Court), 1996 LAB IC-467 (SC) (B.C. Chaturvedi Vs Union of India), 2003 LAB IC-757 (SC) (Regional Manager, UPSRTC, Etawah Vs Hotilal), 2005 LAB IC-4158 (SC) (V. Ramina Vs, APSRTC) and 2005 LAB IC- 854 (SC) (Bharat Forge Co. Ltd. Vs Uttam Manohar).

So, keeping in view the principles ennunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

8. Perused the record. Admittedly, there is no challenge in the statement of claim or at any stage of this case regarding the perversity. or otherwise of the findings of the Enquiry Officer or regarding the proportionality of the punishment by the union. Moreover, from the materials on record, it is found that the Enquiry Officer has given his findings on the basis of evidence adduced in the departmental enquiry. He has not taken any extraneous material for consideration to reach at the findings. The Enquiry Officer has assigned cogent reasons in support of his findings, after analyzing the evidence on record in a rational manner. This is not a case of no evidence or that the findings of the Enquiry Officer are against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

9. So far the proportionality of the puhishment is concerned, grave misconduct of remaining unauthorized absence for more than 10 days has been proved against the workman in a properly conducted departmental enquiry against him. The punishment imposed against the workman cannot be said to be shockingly disproportionate to the proved misconduct against him. Taking into consideration the facts and circumstances of the case and applying the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above to the present case in hand, it is found that there is no scope to interfere with the

punishment imposed against the workman. Hence, it is ordered :

ORDER

The action of the management of WCL in dismissing Shri Dinesh Kumar from services w.e.f. 08-11-2004 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 29/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/221/2003-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 29/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of South Samla Colliery, M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/221/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE NO. 29 OF 2004

Parties : The President UCMU (INTUC), P.O.—Ukhra, Burdwan (W.B.)

Vs.

The Agent, South Samla Colliery, ECL, Burdwan (W.B.)

Representatives :

For the management	:	Sri P. K. Das, Ld. Advocate
For the union	:	Mr. S. Banerjee, Ld. Representative
Industry : COAL	:	State : West Bengal

Dated 19-07-12

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/221/2003-IR (CM-II) dated 12-05-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of South Samla Colliery under Pandaveshwar Area of M/s. Eastern Coalfields Limited in dismissing Sri D. K. Barnwal, U.G. Loader from the services w.e.f. 22-5-2001 is legal and justified ? If not, to what relief he is entitled to?"

Having received the Order of Letter No. L-22012/221/2003-IR (CM-II) dated 12-05-2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 29 of 2004 was registered on 21-06-04 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the reigstered post were sent to the parties concerned.

Mr. S. Banerjee, Ld. Representative of the Union, submits that since the case has already been settled and the workman does not want to proceed with the case any more. So the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (आईडी संख्या 34/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/287/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award

(Ref. No. 34/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Chora O.C.P., Kenda Area M/s. Eastern Coalfields Ltd., and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/287/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE NO. 34 OF 2003

Parties : The General Secretary, KMC, P. O.—Asansol, Burdwan (W.B.)

Vs.

The Agent, Chora O.C.P., Kenda Area, ECL, Burdwan (W.B.)

Representatives :

For the management : Sri P. K. Das, Ld. Advocate

For the union (workman) : Mr. R. Kumar, Ld. Representative

Industry : COAL : State : West Bengal

Dated 19-07-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/287/2002-IR (CM-II) dated 13-10-2003 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chora O.C.P. under Kenda Area of M/s. ECL in denying correct fixation of basic pay and change in date of increment with difference of wages and consequential benefits with retrospective effect to Sh. Umesh Singh, Dozer operator is legal and justified? If not, to what relief he is entitled to?"

Having received the Order of Letter No. L-22012/287/2002-IR (CM-II) dated 13-10-2003 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 34 of 2003 was registered on 27-05-2003 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the reigstered post were sent to the parties concerned.

Mr. R. Kumar, Ld. Representative of the Union, submits that the workman has already retired from service and does not want to proceed with the case any more. So, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (आईडी संख्या 24/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/10/2009-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 24/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/10/2009-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE NO. 24 OF 2009

Parties : The General Secretary, KMC, P. O.-Asansol, Burdwan (W.B.)

Vs.

The Management, Kajora Area, ECL, Burdwan (W.B.)

Representatives :

For the management : None

For the Union (workman) : Mr. R. Kumar, Ld. Representative

Industry : COAL : State : West Bengal.

Dated 17-07-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, No. 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/10/2009-IR (CM-II) dated 11-08-2009 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the demand of Koyala Mazdoor Congress for giving seniority to Shri Parmeshwar Paswan, Attendance Clerk over Shri Ram Karan Ram, Attendance Clerk is legal and justified ? To what relief is the workman concerned entitled?"

Having received the Order of Letter No. L-22012/10/ 2009-IR (CM-II) dated 11-08-2009 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 24 of 2009 was registered on 21-08-2009 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the reigstered post were sent to the parties concerned.

Mr. R. Kumar, Ld. Representative of the Union, submits that the workman has died and the Union does not want to proceed with the case any more. Since the workman has died and Union does not want to proceed with the case, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 13/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था ।

[सं. एल-22012/239/2006-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.13/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Bansra Colliery of M/s. ECL, and their workmen, received by the Central Government on 21-8-2012.

[No. L-22012/239/2006-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present: Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 13 of 2007

Parties : The General Secretary, CMU, P.O. -Asansol, Burdwan (WB).

Vs.

The Agent, Bansra Colliery, ECL, Burdwan (W.B.)

Representatives:

For the management : Sri P.K. Das, Ld. Advocate

For the union (Workman) : Sri G. Roy, Ld. Advocate

Industry: Coal State : West Bengal

Dated—17-7-12

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No.L-22012/ 239/2006-IR (CM-II) dated 23-2-2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Bansra Colliery in not rectifying the date of birth of Shri S.K. Jaffer, Stone Cutter of Bansra Colliery and thereby prematurely superannuating the workman concerned is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order of Letter No. L -22012/ 239/2006-IR(CM-II) dated 23-2-2007 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 13 of 2007 was registered on 3-5-2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of withnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Ld. Advocate for the workman, submits that the workman has left his address and he is no more interested to proceed with the case further. Since the workman is no more interested to proceed with the case further, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अतकुर्रहमान पुत्र श्री हाजी अब्दुल गफूर लाईम स्टोन खदान कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 19/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-29011/9/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2008) of the Central Government Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Atiqurrehman S/o. Haji Abdul Gafur, (Lime Stone Mine Owner Kota) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-29011/9/2008-IR (M)]

JOHAN TOPNO, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण, कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी-श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.निर्देश प्रकरण क्रमांक: औ.न्या.-19/2008

दिनांक स्थापित: 25-7-08

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल-29011/2008(आईआर) (एम) दि. 15-7-08

निर्देश/विवाद अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

जनरल सेक्रेट्री, राष्ट्रीय मजदूर संघ (इन्टक) रामगंजमण्डी जिला कोटा/राज.

...प्रार्थीगण
श्रमिक यूनियन

एवं

अतिकुर्रहमान पुत्र हाजी अब्दुल गफूर
लाईम स्टोन खान मालिक, पीपाखेड़ी, मुकाम सुकेत
रामगंजमण्डी जिला कोटा ।

....अप्रार्थी
नियोजक

उपस्थित

प्रार्थीगण श्रमिक यूनियन की ओर से :- कोई उपस्थित नहीं

अप्रार्थी नियोजक की ओर से :- कोई उपस्थित नहीं

अधिनिर्णय दिनांक : 21-6-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासंगिक आदेश दि. 15-7-08 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णायार्थ सम्प्रेषित किया गया है :-

"Whether the charter of five demands (Annexure-A) raised by the workmen, through Rastriya Mazdoor Sungh, working in the mines of Shri Atiquirrahman S/o. Shri Haji Abdul Gaffoor Bhai is just and legal ? If not to what relief the workmen are entitled and from which diate?"

अनुलग्नक-ए

"1. यह कि संस्थान में कार्यरत सभी कुली, बेलदारों को 90 रुपये प्रतिदिन के हिसाब से मजदूरी भुगतान की जावे तथा सरकार द्वारा घोषित विशेष भत्ता बिलों ग्राउण्ड का भी भुगतान किया जावे ।

2. यह कि खदान में कार्यरत कारीगर/स्टोन कटर को 100 रुपये प्रति सौ वर्ग फुट पत्थर कटाई पर भुगतान किया जावे तथा भारत सरकार द्वारा घोषित विशेष भत्ता बिलों ग्राउण्ड का भी भुगतान किया जावे ।

3. यह कि आपके संस्थानों कार्यरत सभी स्थाई कर्मचारियों को जिनको कि रु. 3000 तक वेतन मिलता है उनको 125 रु. मासिक वेतन वृद्धि तथा 3000 से अधिक वेतन पाने वालों को 150 रु मासिक वेतन वृद्धि की जावे तथा भारत सरकार द्वारा घोषित विशेष भत्ता बिलों ग्राउण्ड का भुगतान किया जावे ।

4. खदान पर कार्यरत श्रमिकों व कर्मचारियों के बच्चों को छात्रवृत्ति दी जावे ।

5. पूर्व में दिये गये समझौतों को यथावत जारी रखा जावे व उनके अनुसार कल्याणकारी सुविधायें दी जावें ।"

हस्ता.

(एस. सी. जोशी)
समझौता अधिकारी एवं सहायक श्रमायुक्त
(केन्द्रीय)कोटा"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों का नोटिस/सूचना विधिवत रूप में जारी कर अवगत करवाया गया ।

3. प्रार्थीगण श्रमिक यूनियन की ओर से क्लेम स्टेटमेन्ट दि. 19-3-09 को पेश किया गया जिसमें यह वर्णित किया गया कि प्रार्थी श्रमिकों की रजिस्टर्ड चुनी हुई संस्था है एवं इस यूनियन ने अप्रार्थी के संस्थान में कार्यरत सभी श्रमिकों व कर्मचारियों के सम्बन्ध में एक मांग-पत्र दि. 1-9-07 को जिसमें कुली, बेलदार, स्टोन कटर आदि को विशेष वेतन, भत्ता, अन्य सभी स्थायी कर्मचारियों को न्यूनतम मासिक वेतन, वेतन वृद्धि, मेडिकल सुविधा, सवैतनिक अवकाश, बच्चों को शिक्षा छात्रवृत्ति दिये जाने व ठेका प्रथा समाप्त किये जाने संबंधी मांग शामिल है, अप्रार्थी के समक्ष पेश किया परन्तु अप्रार्थी द्वारा कोई कार्यवाही नहीं की गयी । इस बाबत समझौता अधिकारी के यहां भी प्रकरण दर्ज हुआ, नियोजक को बुलाया भी गया परन्तु वह उपस्थित नहीं आया, अत: वार्ता असफल घोषित कर यह रेफ्रेन्स इस न्यायालय को भेजा गया । अत: कर्मकारों के उक्त 5 सूत्री मांग-पत्र के अनुरूप परिलाभ दिये जाने की मांग इस क्लेम स्टेटमेन्ट के माध्यम से की गयी ।

4. मामले में दि. 22-7-09 को सुनवाई तिथि से पहले ही दि. 19-3-09 को प्रार्थीगण की ओर से क्लेम स्टेटमेन्ट पेश कर दिया गया जो आदेशिका दि. 22-7-09 के अनुसार रिकार्ड पर लिया गया । इसके बाद अप्रार्थी के जवाब में पत्रावली नियत की गयी एवं आदेशिका दि. 1-7-10 से आज दिन तक प्रार्थीगण या अप्रार्थी की ओर से कोई उपस्थित नहीं आ रहा है ।

5. किसी भी मामले में यदि कोई पक्षकार उपस्थित नहीं आता है तो न्यायालय प्रतिवादी या अप्रार्थी की स्थिति में उसके विरूद्ध एकपक्षीय आदेश दे सकता है परन्तु जहां प्रार्थी ही उपस्थित नहीं आ रहा है तो फिर न्यायालय स्वप्रेरणा से मामले को नहीं चला सकता है एवं ना ही अनिश्चितकाल तक प्रार्थी कर्मकार के आने के इन्तजार में मामला लम्बित रख सकता है ।

6. हस्तगत मामले में आदेशिका दि. 1-7-10 के अनुसार उस दिन से लेकर आज दिन तक करीबन 2 वर्ष की अवधि में प्रार्थीगण यूनियन की ओर से किसी भी सुनवाई पर कोई उपस्थित नहीं आया । आज भी प्रार्थीगण या उनकी ओर से कोई प्रतिनिधि उपस्थित नहीं है । अत: ऐसी स्थिति में अनिश्चितकाल तक मामला उनके आने के इन्तजार में लम्बित नहीं रखा जा सकता है क्योंकि प्रार्थी पक्ष को अपने मामले की पैरवी स्वयं आकर करनी चाहिए, न्यायालय उनके मामले में पैरवी की कार्यवाही नहीं कर सकता है । अत: प्रकरण अदम हाजिरी व अदम पैरवी में निस्तारित होने योग्य है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासांगिक आदेश सं. एल. 29011/9/2008/आईआर(एम) दिनांक 15-7-08 के जरिये सम्प्रेषित निर्देश(रेफ्रेन्स) में प्रार्थी यूनियन की ओर से किसी भी श्रमिक या उनके प्रतिनिधि के उपस्थित नहीं होने से मामला अदम हाजिरी व अदम पैरवी में निस्तारित कर इसी अनुरूप उत्तरित किया जाता है कि प्रार्थीगण इस मामले में न्यायाधिकरण के समक्ष उपस्थित होकर अपने मामले को चलाने या पैरवी कराने में विफल रहने से वे कोई अनुताष प्राप्त करने के अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कॉरपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 19/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-30011/35/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.19/2011) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. (Berhampur) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-30011/35/2010-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T. -cum-labour Court, Bhubaneswar.

Industrial Dispute Case No. 19/2011

Date of Passing Award—28th June, 2012

Between:

1. The Depot In-charge,
M/s. Bharat Petroleum Corporation Ltd.,
Berhampur Depot, Langipalli, Goods Shed Road, Po. Berhampur, Dist. Ganjam.

2. Shri Gopabandhu Maharana,
Contractor, M/s. Bharat Petroleum

Corporation Limited, Berhampur Depot.
Langipalli, Good Shed Road,
Po. Berhampur, Dist. Ganjam.

.....1st Party-Managements

AND

The General Secretary, BPCL Employees Union (ER),C/o. BPCL Golf Green, 31, KIT Scheme, 118, Prince Gulam Md. Shah Road, Kolkatta—95

.....2nd Party-Union

Appearances:

None : For the 1st Party- Management No. 1

Shri R.N. Rath : For the 1st Party- Management No. 2
Authorized Rep.

None : For the 2nd Party- Union

ORDER

On reference by the Government of India in the Ministry of Labour the parties in dispute were called upon to put in appearance and file their pladings in the case.

2. The General Secretary of the 2nd Party-Union on issuance of notice filed statement of claim along with other requisites through post, but without serving copies on the 1st Party-Management No. 1 and 2. There-upon the 2nd Party-Union was called upon to file requisites for service of notice and copies on the 1st Party-Management No. 1 and 2, but he has not complied with the orders of the Tribunal. Whereafter the case was fixed before Lok Adalat in which the 1st Party-Management No. 1 and 2 appeared, but none appeared for the 2nd Party-Union. Spare copies of the statement of claim etc. were served on that date on the 1st Party-Management No. 1 and 2 and they were called upon to file wirtten statement within three weeks fixing 3-1-2012 for further ordes. On the date fixed, only authorized representative for the 1st Party-Management No. 2 appeared and other parties remained absent. The 1st Party-Management No. 2 through his authorized representative took time for filing of written statement which was filed on the next date and the case was ordered to proceed exparte against the 1st Party-Management No. 1 because of its failure to file written statement. The case was again taken up before Lok Adalat on 28-3-2012 after sending notices to the parties, but only authorized representative for the 1st Party-Management No. 2 appeared before Lok Adalat. Hence no fruitful purpose could be achieved for fixing the case before Lok Adalat.

3. The case was once again taken up at Lok Adalat fixed for 18-5-2012, but on that date also the 1st Party-Management No. 1 and the 2nd Party-Union did not appear and only authorized representative for the 1st Party-Management No. 2 appeared. Therefore no negotiation for settlement can take place and the case was fixed for further order on 28-6-2012.

From the proceedings as took place from the date of receipt of the reference i.e. from 15-3-2011 it is revealed that the 2nd Party-Union never appeared before this Tribunal to proceed with the case. Only on sending notice statement of claim was filed and that even without service on copy on the 1st Party-Management No. 1 and 2. He also failed to take steps for service of notice and copy of statement of claim etc. on the 1st Party-Management No. 1 and 2 despite sending notice to him on 24-10-2011. Notices were also issued regarding taking up of the matter before the Lok Adalat thrice, but the 2nd Party-Union failed to appear and did not respond to pursue his case. Hence there are sufficient grounds to assume that the 2nd Party-Union is not at all interested in pursuing it claim and adjudication of the alleged dispute. Either the matter has been subsidized between the parties or the 2nd Party-Union does not want to further proceed with the matter.

In the aforesaid circumstances no dispute award is passed and the reference is deemed to have been answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ऐसोसियेटेड स्टोन इन्डस्ट्रीज, कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 16/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-29012/39/2007-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.16/2007) of the Central Government Industrial Tribunal/Labour Court, Kota now as shown in the Annexure, in the Industries Dispute between the employers in relation to the management of M/s. Associate Stone Industries (Kota) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-29012/39/2007-IR (M)]

JOHAN TOPNO, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी-श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.निर्देश प्रकरण क्रमांक: औ.न्या./केन्द्रीय/-16/2007

दिनांक स्थापित: 22-10-07

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल. 29012/39/2007(आईआर) (एम) दि. 14-9-07

निर्देश/विवाद अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

साहिद अली पुत्र श्री अहसान अली निवासी रामगंजमण्डी ।

...प्रार्थी श्रमिक

एवं

प्रबन्धक मै. एसोसियेटेड स्टोन इण्ड. (कोटा) लि.
रामगंजमण्डी जिला कोटा ।

....अप्रार्थी नियोजक

उपस्थित

प्राथी श्रमिक की ओर से :- कोई उपस्थित नहीं

अप्रार्थी नियोजक की ओर से :- कोई उपस्थित नहीं

अधिनिर्णय दिनांक : 22-6-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासांगिक आदेश दि. 14-9-07 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

> "Whether the action of the management of Associated Stone Industries (Kota) Ltd., Ramganjmandi in terminating the services of Sahid Ali, Ex-JCB Machine Operation w.e.f. 30-5-2006 is legal and just? If not to what relief the applicant is entitled ?"

2. निर्देश/विवाह, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत रूप में अवगत करवाया गया ।

3. प्रार्थी श्रमिक की ओर से क्लेम स्टेटमेन्ट प्रस्तुत कर संक्षिप्त: यह अभिकथन किया गया कि प्रार्थी अप्रार्थी संस्थान में जे.सी.वी. मशीन ऑपरेटर के पद पर दिनांक 18-5-93 से लगातार कार्य कर रहा था वह स्थाई कर्मचारी था । दि. 17-4-06 को दुर्भावना से झूठी रिर्पोट पुलिस में दर्ज करवाने पर उसे षडयंत्रपूर्वक गिरफ्तार कर लिया और पोटा एक्ट में चालान कर दिया जोकि न्यायालय में विचाराधीन है । प्रार्थी को न्यायिक अभिरक्षा में रखने के बाद जमानत पर रिहा कर दिया गया । अप्रार्थी ने पत्र दि. 21-4-06 का स्पष्टीकरण चाहने पर प्रार्थी ने 15-5-06 को दिया था । प्रार्थी को 30-5-06 के पत्र द्वारा बरख्वास्त कर दिया । चूँकि प्रार्थी स्थाई कर्मचारी था अत: संस्थान के स्थाई आदेशों के अनुसार एक माह का नोटिस व अनुशासनात्मक कार्यवाही करने के बाद ही उसे हटाया जा सकता था, किन्तु ऐसा नहीं किया गया । अप्रार्थी का यह कृत्य धारा 25-एफ औ. वि. अधिनियम, 1947 के भी विपरीत है क्योंकि उसे कोई नोटिस या नोटिस वेतन व क्षतिपूर्ति भत्ता नहीं दिया गया । अन्त में क्लेम के माध्यम से प्रार्थी ने 30-5-06 से सेवा से हटाये जाने का कार्य अनुचित घोषित करते हुए सवेतन सहित बहाली के अनुतोष की मांग की ।

4. अप्रार्थी नियोजक की ओर से उक्त क्लेम का जवाब प्रस्तुत करते हुए अभिकथन किया गया है कि प्रार्थी के खिलाफ यह रिर्पोट मिलने पर कि उसके द्वारा कालोनी में दि. 17-4-06 को किसी महिला के साथ रंगरलिया मनाते हुए पुलिस ने पकड़ा था जिस कारण उसके विरुद्ध पोटा में मुकदमा दर्ज हुआ और वह जेल में भी रहा, प्रार्थी को इस बाबत दि. 21-4-06 को आरोप-पत्र दिया गया । प्रार्थी ने इसका स्पष्टीकरण 15-5-06 को प्रस्तुत किया था । चूँकि प्रार्थी का उक्त कृत्य नैतिक अधमता मोरल टरपिट्यूड के कदाचार में होने से अप्रार्थी कंपनी के स्थायी आदेशों के तहत गम्भीर दुराचरण की श्रेणी में रहा जिस सम्बन्ध में घरेलू जांच किया जाना व्यवहारिक व सम्भव नहीं लगने से टालते हुए आवश्यकताअनुसार उपयुक्त मंच पर किया जाना प्रस्तावित किया । प्रार्थी को औद्योगिक शांति, अनुशासन व नैतिक मूल्यों के संरक्षण के व्यापक परिवेश में नौकरी से बरखास्त किया गया है जो उचित है । प्रार्थी श्रमिक की छंटनी नहीं की गयी है, अत: धारा 25-एफ औ.वि.अ. के प्रावधान प्रस्तुत प्रकरण में प्रासांगिक नहीं है । अन्त में जवाब के माध्यम से प्रार्थी के क्लेम स्टेटमेन्ट को सव्यय निरस्त किये जाने की प्रार्थना की ।

5. इसके पश्चात पत्रावली साक्ष्य प्रार्थी हेतु नियत की जाती रही । दि. 29-7-011 को प्रार्थी के प्रतिनिधि उपस्थित आये, उनकी ओर से साक्ष्य पेश करने का समय चाहा गया जो दिया गया । इसके बाद सुनवाई तिथि 22-12-11, 30-3-012, 1-6-012 व आज की सुनवाई तिथि 22-6-012 को भी प्रार्थी की ओर से कोई प्रतिनिधि उपस्थित नहीं हुए एवं ना ही प्रार्थी उपस्थित हुआ । आज अप्रार्थी की ओर से भी कोई उपस्थित नहीं हुआ ।

6. जहाँ प्रार्थी के प्रतिनिधि गत 3-4 सुनवाई तिथि से उपस्थित नहीं आ रहे हैं, प्रार्थी भी उपस्थित नहीं आ रहा है तो फिर न्यायाधिकरण यह मामला प्रार्थी कर्मकार या उसके प्रतिनिधि की अनुपस्थिति में स्वयं अपनी प्रेरणा से नहीं चला सकता है । यदि पक्षकार कोई अनुतोष चाहते हैं तो उन्हें स्वयं आकर अपने मामले में पैरवी करनी होगी । अत: प्रार्थी या उसके प्रतिनिधि के किसी के उपस्थित नहीं आने से साक्ष्य प्रार्थी बन्द की जाती है । अप्रार्थी की ओर से भी कोई उपस्थित नहीं होने से साक्ष्य बन्द की जाती है । अत: मामला अदम हाजिरी व अदम पैरवी में निस्तारित किये जाने योग्य है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने प्रासंगिक आदेश क्रं. एल-29012/39/2007 (आईआरएम) दि. 14-9-07 के जरिये सम्प्रेषित निर्देश (रेफ्रेन्स) को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी या उसके किसी प्रतिनिधि के उपस्थित नहीं आने से मामला अदम हाजिरी व अदम पैरवी में निस्तारित किया जाता है एवं प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हमीद

भाई पुत्र नन्हें खां लाईम स्टोन खदान कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 24/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-29011/23/99-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.24/99) of the Central Government Industrial Tribunal/Labour Court. Kota now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Hamid Bhai S/o Nanhe Khan, Lime Stone Mine Owner Kota and their workman, which was received by the Central Government on 27-7-2012.

[No. L-29011/23/99-IR (M)]
JOHAN TOPNO, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण, कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी-श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.निर्देश प्रकरण क्रमॉक: औ.न्या./केन्द्रीय/-24/99

दिनांक स्थापित: 13-9-99

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल. 29011/23/99(आईआर) (एम) दि. 24-8-99

निर्देश/विवाद अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

जनरल सेक्रेट्री; राष्ट्रीय मजदूर संघ, रामगंजमण्डी, जिला कोटा ।

...प्रार्थीगण श्रमिक यूनियन

एवं

हमीद भाई पुत्र नन्हें खां, लाईम स्टोन खान मालिक पोस्ट सुकेत जिला कोटा ।

....अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक यूनियन की ओर से प्रतिनिधि:- श्री सतीश पचौरी

अप्रार्थी नियोजक की ओर से :- एकपक्षीय कार्यवाही

अधिनिर्णय दिनांक : 25-6-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासंगिक आदेश दि. 24-8-99 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

> "Whether the action of the management of Shri Hamid Bhai S/o. Shri Nane Khan, Lime Stone Mine Owner, Suket in not increassing the daily rates of wages of workers in the mines as per settlement and not regularising the services of those workman who have completed 240 days of services is legal and justified? If not, to what relief the workman are entitled?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पक्षकारों को सूचना-पत्र जारी किये गये ।

3. प्रार्थी यूनियन की ओर से क्लेम स्टेटमेन्ट पेश किया गया जिसमें वर्णित किया गया कि प्राथीगण श्रमिक पक्ष की एक रजिस्टर्ड यूनियन है एवं इसके अधिकांश सदस्य अप्रार्थी के यहां बतौर श्रमिक कार्यरत हैं । प्रार्थीगण श्रमिक यूनियन ने अप्रार्थी प्रबन्धक वर्ग के समक्ष उनके संस्थान में कार्यरत श्रमिकों, कर्मचारियों के सम्बन्ध में एक मांग-पत्र जिसमें कुली, बेलदार को 50 रु. प्रतिदिन के हिसाब से मजदूरी व ब्लो-ग्राउण्ड लेवल को विशेष भत्ता, खान में कार्यरत स्टोन कटर कारीगर को 60 रु. प्रति सेकड़ा पत्थर कटाई, स्थायी कर्मचारियों को 1500 रु. प्रतिमाह वेतन व 100 रु. मासिक वेतन वृद्धि व अन्य विशेष भत्ता, मेडिकल सुविधा, ठेका प्रथा समाप्त करने, सवैतनिक अवकाश दिये जाने व बच्चों को शिक्षा व छात्रवृत्ति दिये जाने संबंधी मांग शामिल है, दि. 1-10-98 को पेश किया । इसके बाद एक रिमाण्डर भी श्रम आयुक्त के माध्यम से दिलवाया गया । श्रम आयुक्तों के यहां से सूचना-पत्र जारी होने के बावजदू भी नियोजक पत्र उपस्थित नहीं हुआ जबकि उसका यह कर्तव्य था कि श्रमिकों द्वारा जो मांग-पत्र रखा गया उसको उचित मानते हुए मांगे स्वीकार करता । अत: अपने क्लेम स्टेटमेन्ट के माध्यम से प्रार्थी यूनियन ने इस आशय की मांग की कि श्रमिकों के सम्बन्ध में 8 सूत्रीय मांग-पत्र जो प्रबन्धक वर्ग के समक्ष दि. 6-8-98 को रखा गया, उसी अनुरूप उन्हें समस्त परिलाभ दिलाये जायें ।

4. अप्रार्थी के नोटिस को तामील होने के बावजूद भी अप्रार्थी की ओर से कोई उपस्थित नहीं हुआ, अत: आदेशिका दि. 4-11-2000 के अनुसार अप्रार्थी के विरुद्ध एकपक्षीय कार्यवाही का आदेश किया गया । इसके पश्चात साक्ष्य प्रार्थी में रामगोपाल गुप्ता का शपथ-पत्र पेश हुआ । अप्रार्थी के विरुद्ध एकपक्षीय कार्यवाही का आदेश होने से उससे कोई जिरह आदि नहीं हो पायी । इसके पश्चात पत्रावली की आदेशिका दि. 24-2-2001 के अनुसार प्रार्थीगण कर्मकार की ओर से रेफ्रेन्स में संशोधन कराने हेतु अवसर चाहा एवं पत्रावली तब से लेकर 9-12-05 तक इसी प्रयोजन हेतु नियत की जाती रही एवं 9-12-05 को प्रार्थी यूनियन के प्रतिनिधि ने कोई संशोधन नहीं कराने का तथ्य प्रकट किया, अत: उसके पश्चात पत्रावली बहस अन्तिम हेतु नियत की गयी ।

5. बहस अन्तिम एक तरफा प्राथी सुनी गयी । बहस के दौरान प्रार्थीगण कर्मकार की ओर से यह दलील दी गयी कि श्रमिक वर्ग ने

जो मांग-पत्र क्लेम स्टेटमेन्ट के साथ पेश किया है, उसके अनुसार श्रमिक/कर्मकार वर्ग को समस्त परिलाभ दिलाये जाने का आदेश प्रदान किया जावे ।

6. हमने प्रार्थीगण की ओर से दी गयी दलील पर तथा पत्रावली पर आयी हुई सामग्री का परिशीलन किया ।

7. सर्वप्रथम तो रेफ्रेन्स जो हुआ है उसमें यह वर्णित है कि क्या नियोजक द्वारा समझौते के अनुसार उनके कर्मकारों की दैनिक मजदूरी की दरें नहीं बढ़ाने तथा उनका नियमितिकरण 240 दिन पूरे करने के बावजूद भी नहीं करने का कृत्य उचित एवं वैध है या नहीं ?

8. अब इस सम्बन्ध में सर्वप्रथम तो प्रार्थीगण यूनियन कर्मकार का दायित्व बनता था कि वह इस रेफ्रेन्स में इस बावत उल्लेख करवाते कि समझौता कौन सी तारीख का उभयपक्ष के मध्य हुआ है जिसकी कि वह क्रियान्विति चाह रहे हैं । अत: समझौते की किसी तिथि का कोई उल्लेख नहीं होने से यह अस्पष्ट ही रहता है कि कौन सी तिथि का समझौता पक्षकारों के मध्य हुआ जिसकी पालना श्रमिक वर्ग कराना चाह रहा है । श्रमिक वर्ग की ओर से क्लेम स्टेटमेन्ट में एक मांग-पत्र प्रबन्धक के समक्ष दिनांक 6-8-98 को पेश किये जाने का उल्लेख है एवं जो मांग-पत्र की कार्बन प्रति पत्रावली पर उपलब्ध है, उसके सम्बन्ध में भी यह कहीं स्पष्ट नहीं हुआ कि इसी मांग-पत्र के बारे में श्रमिक वर्ग व प्रबन्धक वर्ग के मध्य समझौता हो चुका हो । इसके अलावा प्रार्थीगण यूनियन के गवाह के शपथ-पत्र में भी यह कहीं उल्लेख नहीं हुआ है कि कर्मकारों में बेलदार को नियोजक द्वारा कितनी मजदूरी दी जा रही थी एवं वे 50 रु. मांग कर रहे हैं तो प्रबन्धक द्वारा कितनी कम मजदूरी दी जा रही है एवं कितने रुपये का अन्तर है तथा स्टोन कटर कारीगर को 60 रु. प्रति सेकड़ा किस प्रयोजन से किस कार्य की विशेषता या अन्य कारणों के आधार पर दिया जाना है, इसका भी कोई उल्लेख नहीं किया है । सभी स्थायी कर्मचारियों को 1500 रु. वेतन तथा 100 रु. व उससे अधिक वेतन वालों को 150 रु. वेतन वृद्धि दिये जाने की भी मांग की गयी है परन्तु यह कहीं उल्लेख नहीं किया गया कि कितने कर्मचारियों को 1500 रु. से कम वेतन मिल रहा था एवं कितनों को इससे ज्यादा तथा ऐसे कर्मचारियों को कितनी वेतन वृद्धि वर्तमान में दी जा रही थी । इसके अलावा अन्य किसी मांग-पत्र के बारे में भी कुछ भी खुलासा मांगों के औचित्य के सम्बन्ध में इस गवाह के शपथ-पत्र में नहीं हुआ है अर्थात् शपथ-पत्र भी एक औपचारिकता की तरह पेश हुआ है । शपथ-पत्र में यह भी कहीं दर्शाया नहीं गया कि किन-किन कर्मचारियों ने अप्रार्थी के यहां 240 दिन लगातार कार्यदिवस पूरे कर लिये हैं इसके बावजूद भी उन्हें नियमित नहीं किया गया है । अत: जब तक इस न्यायाधिकरण के समक्ष कोई भी पक्षकार अपने रेफ्रेन्स के विवाद के सम्बन्ध में साक्ष्य व तथ्यों बाबत उस मांग का औचित्य एवं संतुष्टि बाबत साक्ष्य पेश नहीं कर दे तब तक न्यायाधिकरण मात्र ऐसे अभिकथनों से जिनकी पुष्टि के समर्थन में किंचित मात्र भी कोई साक्ष्य या सामग्री पेश नहीं हुई है, आँख मूँदकर ना तो ऐसे विवाद का गुणावगुण के आधार पर विनिश्चय कर सकता है एवं ना ही इस प्रकार से आकस्मिक रूप से कोई अनुतोष प्रदान किये जाने बावत आदेश दे सकता है अर्थात् अन्य शब्दों में हम यह भी कह सकते हैं कि प्रार्थीगण यूनियन की ओर से अपने क्लेम स्टेटमेन्ट में वर्णित तथ्यों को साक्ष्य से साबित करने की कोई कार्यवाही नहीं की गयी है, शपथ-पत्र भी मात्र औपचारिकता की तरह पेश किया गया है जिसमें किंचित मात्र भी किसी भी मांग के सम्बन्ध में कोई ठोस साक्ष्य, वजह या कारण प्रकट नहीं किया गया है । अत: यह आसानी से कहा जा सकता है कि प्रार्थीगण कर्मकार ना तो ऐसा कोई समझौता साबित कर पाये हैं जो उभयपक्ष के मध्य निष्पादित हुआ हो एवं ना ही अन्य मांगों के औचित्य को किसी प्रकार से साबित कर पाये हैं । अत: वे रेफ्रेन्स के सम्बन्ध में कोई भी तथ्य साबित करने में विफल रहे हैं, अत: इन परिस्थितियों में कोई अनुतोष दिया जाना सम्भव नहीं है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने प्रासांगिक आदेश सं. एल-29011/23/99-आईआर (एम) दि. 24-8-99 के जरिये सम्प्रेषित निर्देश (रेफ्रेन्स) को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थीगण यूनियन या कर्मकार रेफ्रेन्स में वर्णित समझौते व अन्य मांगों के औचित्य को साक्ष्य से साबित करने में विफल रहे हैं, अत: इन परिस्थितियों में वे कोई अनुतोष प्राप्त करने के अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी पी सी एल एवं प्रकाश एवं सुरेश गाइकवाड द्वारा बी पी सी एल बोरखेडी, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 28/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-30011/39/2007-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.28/2009) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BPCL & Prakash, & Suresh Gaikwad, C/o. B.P.C.L. Borkhedi, Nagpur and their workman, which was received by the Central Government on 27-7-2012.

[No. L-30011/39/2007-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/28/2009 Date 09-07-2012

Party No. 1(A) : The Plant Manager,
BPCL, Borkhedi Depot,
PO: Borkhedi, Nagpur

1(B) : Prakash S/o. Domaji Hande
C/o. B.P.C.L. Borkhedi Depot,
PO: Borkhedi, Nagpur

1(C) : Suresh Gaikwad,
C/o. B.P.C.L. Borkhedi Depot,
PO: Borkhedi, Nagpur

Versus

Party No. 2 : The General Secretary,
Bhartiya Janata Kamgar Mahasangh,
Maharashtra Tilak Putla Karyalay,
Mahal, Nagpur-2

AWARD

(Dated: 9th July, 2012)

In exercies of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the Industrial Dispute Between the Employers, in relation to the management of B.P.C.L. and their 26 workmen, for adjudication, as per letter No. L-30011/39/2007-IR (M) dated 27-7-2009, with the following schedule:—

"Whether the contract between the Management of Bharat Petroleum Corporation Ltd., Borkhedi Depot, Nagpur and their contractors in respect of Shri Kishore Deotale and 25 other contract workers (as per, list enclosed) to the industrial dispute is sham and bogus?

"Whether the demand of the above workers for regularisation and status of permanency by the management of BPCL is just and legal? What relief the workman concerned are entitled to and from the which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and in response to the same a joint statement of claim was filed only by five workmen, namely, Mahendra Nilkantharao Patil, Pawan Nilkantharao Moon, Milind Bhujangrao Waghmare, Smt. Vimal Udhavarao, Muttawar and Manorama Jyotiram Dhoke, even though, the reference has been made in respect of 26 workman as per the list enclosed with the letter of reference. It will not be out of place to mention here that the statement of claim has also been signed by the Secretary of the union, "Bhartiya Janata Kamgar Mahasangh", ("the union" in short) besides the fiye workmen named above.

The case of the five workman as presented in the statement of claim is that according to party no. 1(A), all the 26 workmen are contract workers and the said contract is sham and bogus and all of them are workmen of party no. 1(A) and party no. 1(A) has not obtained licence from competent authority as required under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and therefore, the union raised the dispute before the Assistant Labour Commissioner (Central), Nagpur and also lodged complaint with the Regional Labour Commissioner (Central), Nagpur on 5-9-2006, 31-4-2006 and 31-8-2006 and the five workmen are employees of party no. 1(A) and they are entitled to be reinstated in service with full back wages and all the workmen were shown as contract workers and they were regularly working and they were not paid any retrenchment compensation under the grab of the bogus contract and now, they are being kept away from work and the five workmen worked in the establishment of party no. 1(A) as mentioned below:—

Name	Nature of work	Since when working	Date of Termination
Mahendra Patil	Office work	1-7-2002	12-8-2006
Pawan Moon	D.G Operator	1-4-2002	12-8-2006
Milad Waghmare	Office work	1-5-2003	1-1-2008
Vimal Muttemwar	House keeping	1-4-2004	12-8-2006
Manorama Dhoke	House keeping	1-4-2004	12-8-2006

The five workmen have prayed to answer the referecne in their favour and to direct for their reinstatement.

3. Inspite of sufficient service of notice on the parties no. 1(A), (B) and (C), neither they appeared in the case nor filed any written statement, so, by orders dated 19-10-2010 and 25-5-2011, it was ordered to proceed with the case without written statement, against parties no. 1(A), 1(B) and 1(C) respectively. As the parties' no. 1(A), 1(B) and 1(C) did not appear at all in the case,on 12-12-2011, order was passed to proceed with the case exparte against them.

4. I think it necessary to mention here that even though parties no. 1(A), 1(B) and 1(C) are set exparte, the workmen are not absolve from the responsibility to prove that they are entitled to the reliefs prayed for and it is also necessary for the Tribunal, in such a case, to satisfy itself that the workmen are entitled on the terms of the statute to the relief prayed for.

5. In support of their claim, the five workmen have examined the workman, Mahendra Nilkanthrao Patil as a witness and have produced the zerox copies of a bill

submitted by the contractor M/s. Prakash D. Hande, Party No. 1(B) to Party No. 1(A) for a sum of Rs. 4400 for the month of February, 2006 for supply of man power for office work, gate pass of contract issued in the name of Mahendra Patil on 31-1-2006, cold work permit for the period from 30-5-2005 to 29-6-2005 in favour of contractor, M/s. P Handa and one exist pass dated 2-3-2005 in favour of Mahindra.

The evidence of the workman,Mahendra is on affidavit. The evidence of the workman has remained unchallenged as there was no cross-examination. The workman in his evidence has reiterated the facts mentioned in the statement of claim. He has further stated that the employees covered by the dispute were doing work from the dates mentioned in the statement of claim and he was assigned the job of office work from 1-7-2004 and he used to sweep the office and clean tables and collect bills of the contractors and used to make necessary endorsement on the same and then to submit the bills to the Manager and a copy of such bill is document no. 1and he used to deposit the electric bills of the company and was required to visit Nagpur and for that gate pass was issued in the name of contractor/contract labour and document no. 2 is a copy of such gate pass and he was also required to prepare the work permit and identity cards of the employees by feeding their bio-datas in the computer and document no. 3 is a copy of the gate permit and Pawan Moon was preparing the muster-cum-wage register and document no. 4 is the exist pass issued in his name and the work which he was doing was of party no.1(A) and was of regular nature and the work was available round the year and he is entitled to be regularized by reinstatement and no termination order has been issued to him and therefore, he is deemed to be in employment of the party no. 1(A) and under the standing order, an employee cannot be terminated without written order and the five workmen including himself were employees of party no. 1(A) and they are not being provided with work and they are entitled to be reinstated in service with full back wages.

6. It is clear from the pleadings of the five workmen in the statement of claim and evidence of workman, Mahendra that they have claimed reinstatement in service. The claim of the workmen for reinstatement is quite different from the schedule of reference made by the Government for adjudication. The reference has been made for adjudication of the dispute as to whether the contract between the party no. 1(A) and parties no. 1(B) and 1(C) is sham and bogus in respect of the workmen and as to whether the demand of the workmen for their regularisation and status of permanency is legal and justified. The issue of reinstatement in service of the five workmen was not raised before the conciliation officer and such issue has also not been referred for adjudication. As it is well settled that the Tribunal cannot go beyond the terms of reference and to decide other issues, except the issues referred for adjudication, the claim of the workmen for reinstatement cannot be entertained and adjudicated.

7. In this case, as already mentioned above, the statement of claim has been filed only by five workmen. The other twenty one workmen have not filed the statement of claim, which clearly indicates of their having no industrial dispute with the parties no. 1(A), 1(B) and 1(C) and as such, a "no dispute" award is to be passed in respect of the said 21 workmen.

8. So far the case of the five workmen, who have filed the statement of claim is concerned, it is found from their pleadings in the statement of claim and the evidence adduced by them that there is nothing on record to come to a conclusion that the contract between the party no. 1(A) and their contractors in respect of the workmen is sham and bogus. Rather, the evidence, both oral and documentary adduced by them shows that they were contract labours engaged by the contractors to work with party no. 1(A) and the said workmen were not the workmen of party no. 1(A). All the documents filed by the five workmen show that the same were issued in the name of the contractor. In his evidence also, workman, Mahendra has mentioned that the gatepass is issued in the name of the contractor/contract labour. Documents no. 1 and 3 also show that the same relate to contractor, M/s. Prakash D. Hande.

So far the claim of the workmen that the party no.1(A) did not obtain any licence from the competent authority as requied under the provision of the Contract Labour (Regulation and Abolition) Act, 1970 is concerned, the authority of party no. 1(A) may be liable for the prescribed prosecution in case of violation of the provision of the said Act, but for that it cannot be said that the contract between the party no. 1(A) and the contractor is sham and bogus. Hence, it is found that the demand of the five workmen for regularisation and status of permanency is not justified. Hence, it is ordered:—

ORDER

The contract between the Management of Bharat Petroleum Corporation Ltd., Borkhedi Depot, Nagpur and their contractors in respect of Shri Kishore Deotale and 25 other contract workers (as per list enclosed) to the industrial dispute is not sham and bogus.

The demand of the five workmen, namely, Mahendra Neelkanthrao Patil, Pawan Neelkanthrao Moon, Milind Bhujanrao Waghmare, Smt. Vimal Udhavrao Muthawar and Manorama Jyotiram Dhoke for regularisation and status of permanency by party no. 1(A) is unjustified and illegal. So far the rest 21 workmen are concerned, a "no dispute" award is passed against them.

The concerned workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

S. No.	Workers Name	Nature of work being done	Since then working continuously
(1)	(2)	(3)	(4)
1.	**Kishor Deotale**	Electrician	1-8-2002
2.	**Hanuman Milinile**	Pump Operator	1-3-2002
3.	**Mahendra Patil**	Office work	1-7-2004
4.	**Umesh Turale**	Tank Wagon	1-10-2002
5.	**Pawan Moon**	D.G. Operator	1-4-2002
6.	**Sunil Zade**	Tank Wagon	25-8-2002
7.	**Dinesh Tembhare**	-do-	25-8-2002
8.	**Amar Kamble**	-do-	1-7-2004
9.	**Santosh Bhalerao**	-do-	1-3-2002
10.	**Dilip Mohitkar**	House Keeping	1-4-2002
11.	**Raghabar Sahu**	General	1-12-2002
12.	**Kartik Ram Chandrawanshi**	-do-	1-12-2002
13.	**Sanjay Gadhave**	Office work	1-4-2002
14.	**Milind Waghmare**	-do-	1-5-2003
15.	**Sharad Hande**	Electrician Helper (General)	1-6-2003
16.	**Haridas Ghugre**	House Keeping	1-3-2003
17.	**Vishal Wadone**	Quality Control	1-1-2004
18.	**Sanjay Belekar**	Office Boy	1-2-2004
19.	**Smt. Kasa Bai**	House Keeping	1-3-2004
20.	**Smt. Vimal Mutlawar**	-do-	10-4-2004
21.	**Smt. Manorama Dhoke**	-do-	1-4-2004
22.	**Smt. Vanita Eradkar**	-do-	1-4-2004
23.	**Eknath Madavi**	Electrician Helper	1-4-2004
24.	**Pradip Dhoke**	Tank Wagon	1-4-2004
25.	**Shishupal Manwate**	House Keeping	22-12-2004
26.	**Uttam Muttewar**	-do-	4-6-2004

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रिचर्डसन एंड क्रुडास मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 14/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-31012/3/2002-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2003) of the Central Government Industrial Tribunal/Labour Court No. 2 Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Richardson & Cruddas (Mumbai) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-31012/3/2002-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/14 of 2003

Employers in Relation to the Management of M/s. Richardson & Cruddas (1972) Ltd.

The Deputy General Manager (P &A)
Richardson & Cruddas (1972) Ltd.,
Sir J.J. Road,
Byculla,
Mumbai-400 008

And

Their workman

Mr. N.J. Potdar
Flat No. 32, Swapna Co-op. Housing Society
182, Swatantra Veer Savarkar Nagar,
Thane.

Appearances :

For the Employer : Mr. S.Z. Choudhary, Advocate

For the Workman : Mr. Abhay Kulkarni, Advocate

Mumbai dated the 4th June, 2012

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No. L- 31012/3/2002-IR (M), dated 13-2-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Richardson & Cruddas (1972) Ltd., Mumbai in dismissing the services of Shri Narsingh J. Potdar w.e.f. 28-7-2002 is legal and justified? If not, to what relief the workman concerned is entitled for?"

2. After receipt of the reference notices were served on both the parties. They appeared though their respective representatives. The second party workman filed his statement of claim at Ex. 7. According to him, he was temporary employee of the company since 1974. Since 1977 he was confirmed in the service. He was committee member of the Association of Engineering for several years. There is rampant corrution and misappropriation by the company prevailing in the company. The workman is instrumental in causing investigation into the same. Management staff Mr. Shivaji Gunjal went to the extent of shooting and injuring two women in the factory premises in presence of hundreds of workmen. However no action was taken against him being protected by the management. The atrocities of the management have gone to the extent of non-payment of wages to the workmen at its Mulund unit for about 14 months. The workmen became troublesome to the management and they did not waste single opportunity to harass and victimize him. They issued false, concocted charge-sheet to the workman. The workman submits that, there was farce of departmental inquiry in complete violation of principles of natural justice. The management had engaged goonda elements to threaten the workman and to restrain him from attending the inquiry proceeding. Therefore inquiry officer proceeded exparte inquiry. The inquiry officer was 'yes man' of the management. The inquiry officer completed the inquiry exparte without giving any opportunity to the workman to defend himself. On his report the marfagement terminated the services of the workman on false charges. Therefore, workman raised industrial dispute before ALC (C). As conciliation failed, on the report of ALC (C) Ministry of Labour sent the reference to this Tribunal. Workman therefore prays that the order of termination of his services be declared illegal, bad in law and he be reinstated in the service with full back-wages, with continuity of services and all other consequential benefits.

3. The first party management resisted the statement of claim vide its Written Statement at Ex.13. According to them the claim is not tenable as the proceedings are barred by Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 as the company has been declared as Sick unit by BIFR and revival package has been approved by it and the company is in nursing period. According to them, appropriate Govt. is the Govt of Maharashtra. Hence the reference made by Central Govt. deserves to be dismissed. For the same reason this Tribunal has no jurisdiction to entertain and try this reference. Besides these three preliminary objections, the first party contended that the termination of the workman was not illegal. On the other hand he was terminated after following due process of law. Most of the allegations made by the workman are irrelevant for the purpose of deciding this reference. They denied that the workman was either active trade unionist or committee member as has been alleged. They denied the allegation of corruption and misappropriation. According to them, they are totally false and baseless. They denied that Mr. Gunjal fired at the workman voluntarily. According to them, some workmen have attacked Mr. Gunjal and other officials. They also tried to snatch the licensed revolver of Mr. Gunjal. Therefore, he was forced to fire. The allegations made in the reference are false. They denied that they have victimized the workman. The workman was charge-sheeted on account of acts of misconduct on his part. All the charges levelled against the workman were within the jurisdiction of the company. After giving opportunity to the workman for his explanation, departmental inquiry was

initiated him and independent inquiry officer was appointed. The workman was given full and fair opportunity to defend himself. The IO has observed the principles of natural justice fully. The workman had attempted to stop the inquiry on one pretext or another and was creating situation in which inquiry could not be held. He compelled the management to charge the venue of inquiry. He was given required expenses for reaching the venue of inquiry. However workman made false grievance of engaging goonda elements and threat to him. The allegations to that effect are totally false. The workman willfully and deliberately abstained from inquiry and inquiry officer was constrained to proceed exparte. By his various acts the workman had planned to sabotage the inquiry. He has created various hurdles in the inquiry proceedings and finally boycotted the same. He has lodged false complaint to police. They denied that IO was 'yes man' of the company. According to them, he was independent person. The IO has prepared his report on the basis of evidence on record. The findings of IO are not perverse. The report and findings of the IO were communicated to the workman with show-cause notice for his comments. After considering the material on record, the competent authority passed the order of termination. The dismissal is quite legal and proper. They denied all the allegations made in the statement of claim and contended that their action is perfectly justified and legal and in accordance with the principles of natural justice. Therefore they pray that the reference be dismissed with cost.

4. Following are the issues framed by my ld. Predecessor for my determination. I record my findings thereon for the reason to follow:

Sr. No.	Issues	Findings
1.	Whether the reference is maintainable?	Yes
2.	Whether the inquiry is fair and proper?	Yes
3.	Whether the findings are perverse?	No

REASONS

Issue No. 1

5. According to the first party management State Govt. is the appropriate Govt. and thus this Tribunal has no jurisdiction to entertain this reference. Therefore they pray that, the reference deserves to be dismissed. In this respect ld. Adv. for the second party union argued that the first party is a Central Government undertaking. He further submitted that, in number of other disputes, the Tribunal and even Hon'ble High Court held that appropriate Govt. in respect of first party is Central Government. Ld. Adv. submitted that in Reference CGIT-2/93 of 1998, this Tribunal also gave the same finding in respect of the first party company. The said judgement has reached to its finality as no appeal was preferred there-against. In this judgment, my ld. Predecessor has referred to the findings of Hon'ble High Court recorded in Writ Petition No. 6458/1995. These judgments and findings therein were not challenged by the first partry, where in it is held that, appropriate Govt. in respect of the first party, is the Central Govt. In the circumstances, averment on behalf of the first party, that appropriate Govt. is the State Govt. is found to be devoid of merit. In the light of the above referred two judgments and findings therein, it needs no more discussion to arrive me at the conclusion that Central Govt. is the appropriate Govt. and it is empowered to make the reference to this Tribunal Therefore I further hold that this Central Govt. Industrial Tribunal has jurisdiction to entertain this reference. Consequently I hold that the reference is maintainable. Accordingly I decide this issue no. 1 in the affirmative.

Issue No. 2

6. In this respect some witnesses were not cross-examined on behalf of the second party in the departmental inquiry. It is the case of the second party that the management has engaged some goondas to threaten the second party workman. Due to the threats of goondas, he was unable to attend the inquiry proceeding for cross-examination of some of the witnesses. In this respect the ld. adv. for the first party pointed out that, the second party workman in his cross examination at Ex-42 says that the cannot give the names of goondas who had threatened him. He further pointed out that the second party workman has admitted in his cross that, the first party had offered him travelling expeness from Mulund to Byculla and he was asked to collect bus fare from the accounts office. In the circumstances, the ld. adv. pointed out that the workman was knowing the place and date of inquiry. However he remained absent by saying that, he was threatened by the goondas engaged by the management. He has not given the names of the goondas who has threatened him. It indicates that it is lame excuse put forth by the second party merely to defend himself. No doubt the burden was on the workman to show that any goonda element was engaged by the management and that he was threatened and prevented from attending the inquiry proceedings. However no such evidence is on record. the ld. adv. for the first party submitted that management has no reason to engage goondas. On the other hand he pointed out that muscle powers are being used not by the management but by the union leaders. In this backdrop conclusion can be arrived at that the second party failed to prove that he was prevented by the management to appear and cross-examine some of the witnesses. In short, it is clear that the second party workman though knew the venue and date of the inquiry proceeding, willfully remained absent. Therefore version of the workman that there was violation of principles of natural justice does not stand to reasons.

7. On the other hand the workman has admitted in his cross at Ex-42 that he signed each page of the

proceeding when he attended the inquiry. He has also admitted that he was served with each copy of the proceeding. He has also admitted that copies of all the documents produced by the management before IO were given to him on those dates. He has admitted that copy of page 287 onwards produced with Ex-37 which is inquiry report were served on him. He admitted that he has not submitted any reply thereto. In short the IO has explained the charges to the workman. He was given sufficient opportunity to cross-examine the witnesses. Copies of the documents were given to the workman. Copy of the report was also served on him. In this backdrop I come to the conclusion that, sufficient opportunity was given to the workman to cross-examine the witnesses and to lead his own evidence. The IO has followed the procedure and he has also observed the principles of natural justice. There were also allegations against the IO that he was 'Yes man' of the company and favoured the company. However there is no such evidence led by the workman. Mr. Khillari, the IO cannot be said bias merely being officer of first party company. This version of the second party is found to be devoid of merit. In the circumstances, I come to the conclusion that the inquiry was fair and proper. Accordingly I decide this issue no. 2 in the affirmative.

Issue No. 3:-

8. The inquiry officer has held the inquiry as per the procedure laid thereto. Sufficient opportunity was given to the workman to cross-examine the witnesses and to lead his evidence. In the light of evidence on record, the IO held the workman guilty for the charges levelled against him. The conclusion arrived at by the inquiry officer is not on the basis of surmises or inferences.On the other hand he has considered the evidence on record led by both the parties and his findings are based on the evidence on record. In this backdrop, it needs no further discussion to arrive me at the conclusion that findings of the IO are not perverse. Accordingly I decide this issue no. 3 in the negative.

9. In the light of above discussion I hold that the inquiry was fair and proper and findings are not perverse. In respect of part-II award i.e. on the point of quantum of punishment, there is very little scope for oral evidence, if any and the point can be decided in the light of the precedents laid down by Hon'ble High Court & Supreme Court. Thus I proceed to pass the following order:

ORDER

(i) The inquiry is held fair and proper.

(ii) Findings are found not perverse.

(iii) The parties are directed to remain present on 7-9-2012 for argument/evidence, if any on the point of punishment.

Date: 4th June, 2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2876.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रामजीदास रामरिछपाल मोदी लाईम स्टोन खदान मालिक कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 2/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-29011/20/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2876.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2009) of the Central Government Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Ramjidas Ramrichpal Modi (Lime Stone Mine Owner Kota) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-29011/20/2008-IR (M)]

JOHAN TOPNO, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण,
कोटा/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी—श्री प्रकाश चन्द्र पगारीया,
आर.एच.जे.एस

निर्देश प्रकरण क्रम सं: ओ. न्या./केन्द्रीय/-2/09

दिनांक स्थापित : 7/1/09

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं. एल-29011/20/2008-आईआर (एम) दिनांक 22-10-2008

निर्देश/विवाद अन्तर्गत धारा 10(1)(ध), औद्योगिक विवाद अधिनियम, 1947

मध्य

विक्रम सिंह वगैरह कुल 13 श्रमिकगण

द्वारा जनरल सेक्रेट्री,
पत्थर खान कामगार यूनियन,
बंगाली कालोनी, छावनी, कोटा

. . . प्रार्थीगण श्रमिक

एवं

प्रबन्धक मै. रामजीदास रामरिछपाल मोदी,
लाईम स्टोन माइन ओनर, सातलखेड़ी,
मुकाम मोड़क,
रामगंजमण्डी, कोटा

. . . अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक की ओर से प्रतिनिधि : श्री एन. के. तिवारी

अप्रार्थी नियोजक की ओर से : कोई उपस्थित नहीं

अधिनिर्णय दिनांक : 19-6-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त प्रासंगिक आदेश दिनांक 22-10-2008 के जरिए निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जाएगा) की धारा 10(1)(ध) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :

"Whether Shri Vikram Singh and 12 other workmen (as per list enclosed) were employed by the management of Ramjidas Ramrichpal Modi, Lime Stone Mine Owner, Satalkhedi Mine, Kota during thte period from 22-9-2001 to31-12-2001? Whether non-payment of wages to Shri Vikram Singh and 12 others is legal and just? What relief the workmen are entitled to?"

22-9-2001 से 31-12-2001 तक

		पेमेन्ट योग
1.	विक्रम सिंह कारीगर 720 + 1615 =	2375
2.	किशोर कारीगर 2348 + 485 + 2348 =	5181
3.	हेमराज कारीगर 2217 + 457 =	2674
4.	धन्नालाल कारीगर 1492 + 1494 + 2112 + 1859 =	10087
5.	तानू सिंह कारीगर 10975 + 8048 =	19018
6.	बालू सिंह कारीगर 504 + 4386 =	4890
7.	म्यानसिंह कारीगर 1329 + 4023 =	5352
8.	वीरसिंह कारीगर 1632 + 3641 + 3424 =	8697
9.	पप्पू सिंह पुत्र देवीराम कारीगर -	10000
10.	महावीर कटिंगमेन -	14648
11.	ओम जी -	15815
12.	सीताराम जमादार -	2000
13.	कैलास चन्द - एडवांस राशि	50000

2. प्रार्थीगण श्रमिक की ओर से उनके प्रतिनिधि श्री एन. के. तिवारी उपस्थित आए। अप्रार्थी को नोटिस तामील हेतु भेजा गया जिस पर यह रिपोर्ट आई कि अप्रार्थी प्रबन्धक रामजीदास की दिनांक 12-11-2006 को मृत्यु हो चुकी है व इस सम्बन्ध में मृत्यु प्रमाण-पत्र की फोटोप्रति भी अप्रार्थी के नोटिस के साथ पेश हुई जो पत्रावली में संलग्न है।

3. मामले में आज तक प्रार्थीगण कर्मकार की ओर से क्लेम स्टेटमैन्ट पेश नहीं दिया गया है जबकि उन्हें कई अवसर दिए जा चुके हैं। इसके अलावा सबसे महत्वपूर्ण बात यह है कि रेफ्रेन्स 22-10-2008 के आदेश द्वारा हुआ है एवं मृत्यु प्रमाण-पत्र के अनुसार अप्रार्थी नियोजक की मृत्यु दिनांक 12-11-2006 को हो चुकी थी अर्थात् रेफ्रेन्स होने के दिन अप्रार्थी नियोजक मृत था एवं मृत व्यक्ति के खिलाफ यदि रेफ्रेन्स होता है तो वह प्रारम्भ से ही शून्य होता है अत: रेफ्रेन्स क्लेम स्टेटमैन्ट पेश नहीं होने व अप्रार्थी नियोजक की रेफ्रेन्स होने से पहले ही मृत्यु हो जाने से रेफ्रेन्स प्रारम्भ से ही शून्य घोषित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपनी उक्त प्रासंगिक अधिसूचना/आदेश सं. एल. 29011/20/2008- आई आर(एम) दिनांक 22-10-2008 के द्वारा सम्प्रेषित निर्देश (रेफ्रेन्स) को इसी अनुरूप उत्तरित दिया जाता है कि इस मामले में रेफ्रेन्स से पहले ही अप्रार्थी नियोजक की मृत्यु हो जाने से मृत व्यक्ति के विरुद्ध रेफ्रेन्स हुआ है जो प्रारम्भ से ही शून्य होने से कोई अनुतोष दिया जाना सम्भव नहीं है।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कॉरपोरेशन लिमिटेड एवं नूतन कंस्ट्रक्सन अहमदनगर के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदनगर के पंचाट (संदर्भ संख्या 3/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था।

[सं. एल-15025/1/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2008) of the Central Government Industrial Tribunal/Labour Court, Ahmednagar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and Nutan Construction (Ahmednagar) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-15025/1/2012-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE SECOND LABOUR COURT AT AHMEDNAGAR

(BEFORE SHRI R.B. CHORGHE, PRESIDING OFFICER, 2ND LABOUR COURT, AHMEDNAGAR)

Reference (IDA) No. 3/2008

1. The Manager,
M/s. Bharat Petroleum Corporation Ltd.,
Akolner Depot., Post-Akolner,
Distt. Ahmedanagar

... First Party No. 1

2. M/s. Nutan Construction,
Village Akolner,
Tal. Nagar, Distt. Ahmednagar

... First Party No. 2

Vs.

Sanjay Jaywant Harde,
Age-33 years, Occ.-Nil,
R/o. Sarola Kasar,
Tal. Nagar, Distt. Ahmednagar

... Second Party

Coram : Shri R.B. Chorghe, Presiding Officer
2nd Labour Court, Ahmednagar.

Appearances :

Shri A.V. Patil, Advocate for First Party No. 1

Shri. Khatke, Advocate for First Party No. 2

Shri A. Y. Garje, Advocate for Second Party

AWARD

(Delivered on 7-6-2012)

1. Present reference was referred for adjudication by the Office of Government of India, Bharat Sarkar, Ministry of Labour/Shram Mantralaya, vide order dated 1-4-2008 holding that the Central Government is of the opinion that an industrial dispute exists between the employer M/s. Bharat Petroleum Corporation Ltd., and their workmen. Hence it referred the dispute for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The issue as per schedule was to be adjudicated. On receipt of reference, my Ld. Predecessor issued notices on both concerned parties. They were served.

2. The second party namely Sanjay Jaywant Harde, filed 'Statement of Claim' vide Exh. U-5 challenging the illegal termination dated 27-7-2004 and prayed for setting aside the same and reinstatement with continuity in service and full back wages. It is contended that the first party namely Bharat Petroleum Corporation Ltd. is having its depot at Akolner, District-Ahmednagar. He started construction and thereafter functioning of storage and distribution of petrol, diesel, kerocene and oil. When the work was started there was one Manager, one Assistant, four Operators and two Clerks. There was no office boy or Peon. Also there was no Watchman.

3. As there were vacancy of post of watchman, second party approached the first party no. 1 for the post of security guard. He was allowed to resume on duty w.e.f. June, 1993. He was drawing monthly salary of Rs. 700 initially from the first party No. 1 who use to allot him duty and supervise his work. It is his contention that false and fabricated documents were prepared to show him as employee of contractor. That being satisfied with his work, he was taken in the office as a peon in the year 1999. His initial payment was Rs. 1400 per month. He was alloted the work to draw Demand Draft, Deposit Demand Draft in the Bank, withdraw the amounts from the Bank, purchase the stationary and other miscellaneous items, and also to submit samples at Manmad Depot. and to bring documents from there. He was carrying out his duties as directed.

4. That the work of loading and unloading, gardening, and sweeping was given to one Popat S. Bhor on contract basis and it was carried out in the name of first party No. 2 M/s. Nutan Construction. That, no muster roll was maintained by the first party no. 1 Though second party was being paid along with employees engaged by first party No. 1. That, his last drawn salary was Rs. 3500 per month. He was insisting for maintaining muster-roll and pay sheets to have a status as permanent employee. He had put up his grievance. Being annoyed, on 27-7-2004 it was told that his services are no more required. He made a complaint on 11-10-2004 and 17-11-2004 to the Assistant Labour Commissioner, Ahmednagar. Since the competent authority is at company, no response was given. It is further contended that the first part No. 1 during the conciliation proceeding stated that he was employed by first part No. 2, contractor. The second party submit that first party No. 2 Contractor. M/s. Nutan Construction never engaged him or made payment to him. There is no employer-employee relationship between second party and first party No. 2 M/s. Nutan Construction. That he is a 'workman' and the first party No. 1 M/s. Bharat Petroleum Corporation Ltd. is his employer. Just by taking advantage of paper arrangement, his services are terminated. There was no compliance of one month notice, notice pay. He was working continuously through out the year. There was no charge sheet or show cause notice issued to him. Hence, he prayed for setting aside the termination and reinstatement with continuity in service and full back wages.

5. That, the first party No. 1 M/s. Bharat Petroleum Corporation Ltd. appeared through their Advocate and filed 'written statement' vide Exh. C-11 denying all contentions, allegations and averments of the second party made in the Statement of Claim, stating that the claim is not legal and tenable according to law, hence, it be rejected in liminie. That, the second party Sanjay Jaywant Harde was engaged by the contractor M/s. Nutan Construction and as such he was not a 'workman' within the meaning of Section 2(s) of Industrial Disputes Act, 1947. The instant reference needs to be rejected for want of employer-employee relationship. That the first party No. 1 has executed a contract with M/s. Nutan Construction, an independent contractor for carrying out Marfatia jobs as per terms and conditions stipulated in the said contract.

6. It is further submitted that on 29-6-2004 at about 12.30 p.m. when depot incharge Shri D.B. Jadhav was coming inside the depot premises, he saw the second party Sanjay Harde carrying aluminum bucket which is used for correcting the quantity of petrol filled in the tank lorry, and going towards tank lorry filling shed from two wheeler parking area. It was found that he has pilfered petrol from

tank-lorry and filled in his motor cycle parked at parking area. Accordingly, report was given. He was caught red-handed while committing theft. Hence, M/s. Nutan Construction shifted him from the Marfatia Job and arranged to engage him through the contractor performing Tank Wagon unloading job at the said depot. The second party did not report at new place and discontinued reporting for work. He was never recruited/appointed by the first party No. 1. Hence, reference is not tenable. There was no employer-employee relationship between first party No. 1 and second party. All contentions are denied parawise. Repeatedly saying that he was employed by the contractor. It is further contentions of the first party No. 1 that the first party No. 1 has given the contract for providing the security services at the Akolner Depot to M/s. Security Services and Intelligence Bureau, Thane during the year 1993. The second party was initially engaged through above agency under its full supervision and control and paid the wages by the said agency. thereafter, the second party was engaged by first party No. 2—contractor M/s. Nutan Construction who was doing miscellaneous jobs for and on behalf of first party No. 1. Hence, reference be rejected.

7. The first party No. 2 appeared but failed to the reply to the statement of claim and contest the reference.

8. Though the issues were framed by my Ld. Predecessor. It is a reference in which issues as per schedule is to be decided.

Issue	Findings
1. Whether the services provided to the second party Sanjay Jaywant Harde, directly by the management of Bharat Petroleum Corporation Ltd. can be treated as direct employment under Bharat Petroleum Corporation Ltd., while it is established that at the time of removal from service, the payment was made by the contractor M/s. Nutan Construction engaged by M/s. Bharat Petroleum Corporation Ltd?	in the negative does not survive
2. If yes, what relief to be provided to the workman concerned?	
3. What relief ?	As per final order

REASONS

9. **As to issue no. 1 :** It is pertinent to note here that since the reference is referred for adjudication on the specific issue, this court is bound by the same and cannot extend the scope of statement of claim or demands of second party beyond schedule attached to the reference. So far as employment of second party is concerned except mere words he cannot make out that he was engaged by first part No. 1. He had filed evidence on affidavit and certain documents vide Exh. U-8. It is a account of Skypak Services Specialists Ltd. for the month of August, 2000. It is called daily pick-up—State Bank of India in the name of client M/s. Bharat Petroleum Corporation Ltd. (Exh. U-15). He also brought on record certificate at Exh. U-16 issued by the then Dy. Manager (Admin.) West. It was the certificate issued on 23-1-2001 mentioning that he was working with Bharat Petroleum Corporation Ltd. He was authorised to carry 9 Gold coins of 8 gms each. On the said basis he is claiming that he was employee of M/s. Bharat Petroleum Corporation Ltd.—first party No. 1. He has produced xerox copy of one challan alleged to be prepared by him for and on behalf of Bharat Petroleum Corporation Ltd. (Exh. U-17). Also one letter addressed to the Treasury Officer, Ahmedanagar for collecting the stamp paper in the name of Bharat Petroleum Corporation Ltd. (Exh. U-18). Copy of bearer cheque (Exh. U-19). It is a fact that earlier second party Sanjay Harde was appointed through Security Agency and the construction was going on. Then and thereafter when actual functioning of depot was started one M/s. Nutan Construction, an independent contractor for carrying out miscellaneous work on contract basis. The second party was employee of said contractor, working in the office of Bharat Petroleum Corporation Ltd., Depot at Akolner, Distt. Ahmednagar. He was being paid by the contractor. In the reference also this fact is emphasize that it is established fact that at the time of removal from service payment to the second party was made by the contractor M/s. Nutan Construction engaged by Bharat Petroleum Corporation Ltd.

10. The first party no. 1 through its Advocate have filed on record number of documents vide Exh. C-14 which are collectively marked Exh. C-18. They are bills in respect of miscellaneous jobs done at the depot submitted by M/s. Nutan construction. It is emphasis that those payments were made by Bharat Petroleum Corporation Ltd. to M/s. Nutan Construction for hiring the services of second party. Also filed on record vide Exh. C-19 a Certificate of Registration in respect of Contract Labour (Regulation and Abolition) Act. Also vide Exh. C-20 a certificate of particulars. Vide Exh. C-21 particulars of registration agreement in respect of Marfatia contrat with M/s. Bharat Petroleum Corporation Ltd. which is at Exh. C-22, details of contract vide Exh. C-23, Part time Marfatia Contract vide Exh. C-24, the first party No. 1 vide Exh. C-26, C-26, C-27, C-28, C-29 and C-30 is another agreement stating out terms and conditions. All the documents are in respect of contract with M/s. Nutan Construction are produced after Exh. C-31. Further a copy of tender for providing security services at proposed oil depot. Akolner is produced. Further bio-data's of security guards employed at the relevant time vide Exh. C-42; Security Srvice and Intelligence Bureau. Thane the charges for security arrangement rendered at Akoler Depot for the month of June, 1993 along with names of employees mentioned. Mr. S.J. Harde is also one of the employee as a security guard. Memorandum of agreement dated 4-7-1994 is also produced between Bharat Petroleum Corporation Ltd. and M/s. Security Services and

Intelligence Bureau. Vide Exh. C-43 the muster rolls for the concerned period are produced showing the number of employees employed by M/s. Bharat Petroleum Corporation Ltd. Nowhere the name of the second party is mentioned. Thus, from October, 1997 the first party No. 1 M/s. Bharat Petroleum Corporation Ltd. has tried to prove that the second party was never employed by them directly. Except the documents filed at Sr. No. 2 of Exh. U-8, there is nothing to show that he was employed by M/s. Bharat Petroleum Corporation Ltd. He was not under direct employment of Bharat Petroleum Corporation Ltd. He has raised the claim on the basis of said document. Except this he cannot produce any other documents to show that he was employed by them.

11. It is pertinent to note that, the first party No. 1 M/s. Bharat Petroleum Corporation Ltd. is Government of India undertaking. There are rules and procedure for recruitment of employees. Advertisements are published exams. interviews are held, written appointment letters are issued, muster rolls are maintained. No such documents are produced on record by the second party. Though he had given a notice demanding documents, be himself cannot prove that he was employee of first party No. 1.

12. The documents produced by the first party no record along with evidence of their witness examined on affidavit one Mr. Deepak Baburao Jadhav, Dy. Manager Ops. number of facts are disclosed. He had filed affidavit as to how documents claimed by the second party could not be produced. As the second party was employee of contractor, those documents are with M/s. Nutan Construction, who did appear but did not file say in the present case. He was contractor and had not contested the reference.

13. The second party relied upon the judgment reported in 2001 (4) L.L.N. 1156, wherein it is held that, "the non-production of muster roll comes in the way of the management as it was the best evidence in its possession. Adverse inference was rightly drawn by thte Labour Court." So far as fact brought on record by first party no. 1 in the present case are concerned, merely non production of documents as required by the second party will not come in the way of management because they have produced their muster roll wherein name of second party is nowhere mentioned.

14. He also relied upon the judgment reported in 1988 I.C.L.R. 38, where in it is held that, in case of abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an inquiry before terminating his service on that ground. As it is established and proved by the first party No. 1 Bharat Petroleum Corporation Ltd. that the second party was not employed by them. He was employee of contractor and on shifting his job he discontinued himself. It is not concern of first party to issue him show cause notice or initiate disciplinary action, as there was no employer-employee relationship. Hence, the ratio laid down in above cited Judgment will not help the second party.

15. He also relied upon the Judgment reported in 2010 ICLR 549. It is on the point of completion of 240 days in preceding 12 months and termination in contravention of Section 25-F of the Act. So far as issue referred for adjudication is concerned, this court is not supposed to go beyond the limit and scope of the issue. It is to be find out whether second party was employed by M/s. Bharat Petroleum Corporation Ltd., directly as it was established that he was being paid salary till termination by M/s. Nutan Construction-contractor. Under these circumstances, having abandoned the services or alleged to have been terminated, he cannot seek benefit of retrenchment compensation from first party No. 1—M/s. Bharat Petroleum Corporation Ltd. The first party No. 1 has proved that there was a contract and registered agreement between them and M/s. Nutan Construction to provide services of miscellaneous work through Marfatia. These documents are sufficient to hold that the second party was never employed by the first party no. 1.

16. He also relied upon the Judgment reported in 2007 I CLR 292. It is also on the point of abandonment of service, where employer must give notice calling upon workman to resume duty and must also hold enquiry before terminating service. It is nothing but repentation of earlier citation.

17. In order to defend the Statement of Claim and to put up their case, the first party mr. 1 relied upon the judgment reported in 2005 II L.L.J. 1153. It is on the point of Delay and Laches—Though no time limit prescribed for raising industrial dispute, stale claim, held, could not be entertained. Looking at the facts on record, the second party was allegedly terminated in the year 2004. He has raised the dispute in the year 2008 and reference was referred for adjudication in the year 2008. There was considerable delay. By the time there was no industrial dispute in existence at all, however the procedural part have taken its time. The reference cannot be rejected on the sole ground but it is held that raising of dispute by the second party at the belated stage creating doubt about its certainty.

18. They have also relied upon the judgmment reported in 2006 II LLJ 722, it is case between Secretary. State of Karnataka and others V/s. Umadevi and others. It is on the point of right of temporary employees of a State to seek permanent status on the basis of long service Any recruitment to State service to be governed by rules, constructional and statutory. No doubt, the first party No. 1 M/s. Bharat Petroleum Corporation Ltd., is a Central Government undertaking. It has its own rules and regulation for appointment of staff-employees. The second party could not establish his employement by Bharat Petroleum Corporation Ltd., Directly.

19. The first party relied upon the judgment reported

in 2007 III CLR 143. It is on the point of statutory bodies like appellant bond to implement constitutional scheme of equality. As disclosed earlier, though the first party No. 1 is a statutory body, the employment of second party was not as per laid down procedure. He was employed through contractor. Hence, cannot avail the benefit of reinstatement.

20. The first party no. 1 further relied upon the judgment reported in 2008 (119) FLR 589. It is in respect of Contract Labour (Regulation and Abolition) Act, 1970-workers, engaged through contractors-scope of judicial review of reference is very limited. The ratio laid down in the above cited judgment is fit to the present case and circumstances, as it is proved that the second party was employed through contractor, he cannot avail the benefit as a regular employee of first party No. 1, as prayed.

21. The first party also relied upon the judgment reported in 2008 (119) FLR 293. It was in respect of the issue as to who is actual employer of the contract labourer. So far as present case is concerned, said issue is the only issue for adjudication and it is proved that the second party was employed by contractor who carried out work for first party No. 1.

22. The first party no. 1 relied upon the judgment reported in 2005 II LLJ 153. It is a famous case of Kendriya Vidyalaya Sangathan case, wherein it is held that, it is observed that the respondent had neither pleaded nor placed any material to show that he was not gainfully employed. It pointed out that the initial burden was on the employee to prove the above fact.

23. First party No. 1 also relied upon the Judgment in Writ Petition No. 1615 of 2008 delivered by High Court of Bombay. Bench at Aurangabad on 8-7-2009 on the same point that, the second party failed to establish that he was not gainfully employed but admitted in cross examination that he was working on daily wages and earning Rs. 150 as and when work was available. That case is sufficient to reject the reference.

24. Considering the facts and circumstances and evidence on record with the ratios laid down in above cited judgments submitted by rival parties, I am of the opinion that the second party failed to establish that he was directly under employement of M/s. Bharat Petroleum Corporation Ltd. The fact that he was working with them as a office boy and carrying out certain duties as a Marfatia through contractor does not mean he was regular employee employed by them. Hence, I answered Issue No. 1 in the negative. Issue No. 2 does not survive and Issue No. 3 as per final order, and proceed to pass following award.

AWARD

1. Reference is answered in the negative.

2. Party no. 2 is not entitled for any relief.

Ahmednagar,

Dated : 7-6-2012

R. B. CHORGHE, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय विमानपत्तन प्राधिकरण, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 179/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2012 को प्राप्त हुआ था ।

[सं. एल-11011/8/2001-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 21st August, 2012

S.O. 2878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 179/2011) of the Central Government Industrial Tribunal/Labour Court, No. 1 Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airport Authority of India (New Delhi) and their workman, which was received by the Central Government on 27-7-2012.

[No. L-11011/8/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No. 179/2011

Shri Chote Lal and Sh. Mukesh,
Through Airport Employees Union,
3, V.P. House, Rafi Marg,
New Delhi-110001.

... Workmen

Versus

The General Manager,
Airport Authority of India,
Indira Gandhi International Airport,
New Delhi ... Management

AWARD

Airport Authority of India (herein after referred to as the Authority) awarded work of horticulture features at Indira Gandhi International Airport, New Delhi to a contractor. To discharge his contractual liability, the contractor engaged Shri Chote Lal and Mukesh Kumar, besides others. Services of Shri Chote Lal and Mukesh Kumar were dispensed with by the contractor on 4-5-2000 and 5-6-2000 respectively. The aforesaid claimants belaboured under a belief that they were employees of the

Authority. They raised a demand on the Authority for reinstatement of their services. When the Authority had not paid any heed to their demand, they raised a dispute before the Conciliation Officer. On failure of conciliation proceedings, the appropriate Government formed an opinion that there does not exist a dispute to be referred for adjudication through an industrial adjudicator. The claimants filed a writ petition before the High Court of Delhi, being CWP No. 817 of 2003. While disposing the writ petition, the High Court commanded the appropriate Government to consider the matter afresh. In compliance of the missives, so given by the High Court, appropriate Government referred the dispute to Central Government Industrial Tribunal No.2, New Delhi for adjudication, vide order No.L-11011/8/2001-IR(M), New Delhi, dated 22-5-2007 with following terms:

> "Whether the termination of the workmen, Shri Chote Lal (Mali) on 4-5-2000 and Shri Mukesh Kumar(Mali) on 5-6-2000 by the management of Airport Authority of India is just and legal? If not, to what relief the concerned workmen are entitled to?"

2. Claim statement was filed by Shri Chote Lal as well as Shri Mukesh Kumar, pleading therein that they joined services with the Authority in May 99 and 1-7-1999 respectively as mali. They worked sincerely, honestly, diligently with full devotion and never gave any chance of complaint to their superiors. Provident Fund and Employees State Insurance facilities were made available to them by the Authority. Identity cards were issued in their favour by the Authority during the course of their employment. Contents of those identity cards demonstrate that there was a relationship of employer and employee between them and the Authority. They were directly employed by the Authority and there were no intermediary in between. They project that if there was any intermediary, even then that fact will not come in their way since the contract between the Authority and the Contractor was sham contract with perfect paper work. It was entered into with an intention to hide the reality and as such they became employees of the Authority.

3. Their services were terminated on 4-5-2000 and 5-6-2000 respectively in an arbitrary and illegal manner, plead the claimants. No notice or pay in lieu thereof was given to them. No retrenchment compensation was tendered to them. This makes the order of the Authority violative of the provisions of Section 25F of Industrial Disputes Act, 1947 (in short the Act). Neither any charge sheet was served upon them nor a domestic enquiry was conducted. They sent notice of demand, claiming reinstatement of their services. When Authority did not pay any heed to their demand, they raised an industrial dispute before the Conciliation Officer. The Conciliation Officer entered into conciliation proceedings, which ended into failure. The dispute was not referred for adjudication. When their dispute was not referred, they filed a writ petition before the High Court of Delhi being C.W.P. No. 817 of 2003. Vide order dated 2-2-2007, the High Court quashed the order of not referring the dispute for adjudication. In compliance of the directions given by the High Court, present reference has been made. They claimed that orders of termination of their services may be held to be illegal and they may be reinstated in service of the Authority with continuity and full back wages.

4. The Authority demurred the claim pleading that for the purpose of maintenance and development of airports, the Authority engaged a contractor for maintaining horticulture features. M/s. Garden Paradise was awarded contract for work of maintenance of horticulture features, vide agreement dated 8-12-1998 for a period of 12 months on unit rate basis. Probably, it was the contractor who engaged the claimants. The contractor paid wages to his employees as per provisions of the Minimum Wages Act. The Authority used to ensure as to whether the contractor was abiding by the provisions of labour laws.

5. The claimants were never engaged by the Authority as gardeners. No question of payment of their wages by the Authority does arise. Benefits of provisions of Employees State Insurance, Act 1948 and Employees Provident Fund Miscellaneous Provisions Act were provided to his employees by the contractor. Those benefits were also given to the claimants. Entry passes were issued by Bomb Dog Disposal Squad and not by the Authority. Issuance of entry passes in favour of the claimants would not project them to be employees of the Authority. The claimants were aware that they were never engaged by the Authority. Contract entered into between the Authority and the contractor was genuine. There is no case for declaration of the claimants as employees of the Authority. Their claim for reinstatement with continuity and, full back wages is liable to be dismissed, being devoid of merits.

6. In rejoinder, claimants reiterated facts pleaded by them in the claim statement.

7. The claimant, Chote Lal tendered his affidavit as evidence. He was cross examined on behalf of the Authority.

8. Claimant, Mukesh Kumar had also filed his affidavit dated 23-5-2008 as evidence. However, he opted not to come forward for facing rigors of cross examination. When Mukesh Kumar abstained from the proceedings, evidence was closed on behalf of the claimants. Since facts sworn by Shri Mukesh Kumar could not be purified by an ordeal of cross examination, contents of his affidavit cannot be read in the case.

9. Vide order NoZ-22019/6/2007-IR(C-II), New Delhi, dated 30-3-2011, the case was transferred to this Tribunal by the appropriate Government for adjudication.

10. Shri Rakam Singh, Senior Manager, was examined and evidence was closed on behalf of the Authority.

11. Arguments were heard at the bar. During the course of arguments, Shri Vishwanathan, authorised representative of the claimants, made oral request to allow him to adduce additional evidence to establish that Provident Fund and ESI facilities were granted to the claimants by the Authority. Request was granted and the claimants were permitted to adduce additional evidence.

12. The claimants abstained from putting their appearance before the Tribunal on 5-6-2012 and 22-6-2012. Consequently, the Tribunal was constrained to proceed with the matter under Rule 22 of Industrial Disputes (Central) Rules, 1957. Opportunity to adduce additional evidence was cut to size.

13. Arguments were heard at the bar. Shri V.P. Gaur, authorised representative, advanced arguments on behalf of the Authority. None came forward on behalf of the claimants to present facts. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

14. In his affidavit Ex.WW1/A, Shri Chote Lal swears that he had been working with Horticulture Manager, Indira Gandhi International Airport, New Delhi, since May 99. He used to report for his duty at nursery, which was located across the road on other side of the Indira Gandhi International Airport, New Delhi. No pass was required for reaching the said nursery. Makeshift office was located in the nursery itself. He used to report to Shri Hori Lal, Shri K.P. Singh and Shri Tripathi, who were Manager/Incharge of the said nursery. He was sent inside the airport, where security pass was required. Security passes were issued in his favour. Passes were issued in his favour by the Authority, which fact projects that he was an employee of the Authority. He was getting a salary of Rs.2025.00 per month. He projects that if there was any contract in between a contractor and the Authority, it was sham contract with perfect paper, work. He had worked with the Authority from May 99 till 4-5-2000. His services were terminated in an illegal manner. During the course of his cross examination, he concedes that no evidence is in his possession to project that he was given employment by the Authority. He further concedes that he cannot adduce any evidence to show that his services were terminated by the Authority.

15. Shri Rakam Singh swears in his affidavit Ex.MW1/A that the claimants were never employed by the Authority. They were engaged by M/s Garden Paradise, to whom work for horticulture features was awarded and agreement was executed on 28-12-1998. The contractor was to be paid on unit rate basis, who had to provide services to the Authority at specific rates. Contractor was supposed to execute the work as per 'schedule of work' detailed in the contract agreement dated 28-12-1998. Specific amount was given to the contractor, who in turn engaged his employees. The contractor was responsible to supervise work of his employees. He was solely responsible for payment of wages to the claimants, as per provisions of the Minimum Wages Act. Payment Register of the contractor is Ex.MW1/13 while challan for Employees State Insurance and Provident Fund subscription are Ex.MW1/11 and Ex.MW1/12 respectively.

16. When facts unfolded by Shri Chote Lal and Shri Rakam Singh are appreciated, it came to light that Shri Chote Lal concedes that he is not in possession of any evidence to show that he was engaged by the Authority at any point of time. He also admits that there is no evidence in his possession to project that his services were dispensed with by the Authority. However, to project his case, Shri Chote Lal has placed reliance on security passes, which are Ex.MW1/W1 to Ex.MW1/W14. These are photocopies of security passes/daily permit issued in favour of the persons who had entered the prohibited area of Indira Gandhi International Airport, New Delhi. Ex.MW1/W1, Ex.MW1/W2, Ex.MW1/W3, Ex.MW1/W5., Ex.MW1/W7, Ex.MW1/W8 and Ex.MW1/W13 were issued in favour of Shri Ram Milan, Samar Pal, Rajesh, Mukesh, Nazir Khan, besides others. Ex.MW1/W4, Ex.MW1/W6, Ex.MW1/W9 to Ex.MW1/W12 were issued in the name of Shri Chote Lal. When these passes are scrutinized, it came to light that the claimant and others were permitted to go inside the prohibited area on dates specified in the passes referred to above. These passes were issued by the Incharge, Pass Section, Bureau of Civil Aviation Security, Government of India, New Delhi. In these passes, names of persons who were allowed entry are mentioned, besides their designation as 'mali/labour'. It is also mentioned therein in address column that the passes were issued to the aforesaid persons 'C/o the Authority'. Whether the writing, 'C/o the Authority' mentioned in the above passes would project that the claimant and others were allowed entry inside the prohibited area, being employees of the Authority. For appreciation of above writing, facts and circumstances detailed by the claimantant as well as Shri Rakam Singh are to be looked into. As claimant concedes, these passes are not evidence of the fact that he was engaged by the Authority. Consequently, Shri Chote Lal, himself projects that these passes were not issued in his favour, being an employee of the Authority. On the other hand, Shri Rakam Singh unfolds that the claimant was an employee of the contractor, in whose favour these passes were issued when he was to enter the prohibited area of the airport. Shri Rakam Singh announces that contract was awarded to M/s Garden Paradise, who had engaged his employees to carry out the work awarded to it, as per 'schedule of work'. His employees used to go inside the prohibited area, on the strength of the passes referred above. The words 'C/o the Authority'. would show that Incharge, Pass Section, Bureau of Civil Aviation Security described that on the strength of these passes labours were going inside to carry out work awarded by the Authority to the contractor. In case these documents intended to project claimants as employees of the Authority, instead of 'C/o the Authority', employees of the Authority would have been written therein.

Consequently, these documents would not persuade this Tribunal to conclude that the claimants were ever engaged by the Authority. Shri Rakam Singh makes it clear that contract was awarded in favour of M/s. Garden Paradise, which Ex.MW1/1. He went on to detail that the contractor was to execute the work as per 'schedule of work', through his employees. Ex. MW1/ll and Ex.MW1/12 are copies of challans on the strength of which employees insurance funds subscription and employees' provident fund subscription were deposited by the contractor for his employees. He makes it clear that payment was made to the claimant by the contractor and copy of payment register is Ex.MW1/13. These documents were not at all dispelled on behalf of the claimant when, Shri Rakam Singh faced ordeal of cross examination. Ex.MW1/13 is the copy of payment register wherein names, of the claimants appear, besides name of one Vinod and Jagdish Mehto. Copy of payment register bring it over the record that wages were paid by the contractor to the claimants. Ex.MW1/11 and Ex.MW1/12 substantiate the fact that M/s Garden Paradise have employed some labours to carry out the work awarded to it, in respect of those employees provident fund subscription and ESI fund subscription were deposited. It is emerging on the record that the claimants were employees of the contractor. In a faint voice, the claimants concede that there was a contractor, who had employed them. It has been agitated that the contract between the Authority and the contractor was a sham and perfect paper work. Consequently, it is crystal clear that the claimants had no better case than that the proposition that they were employee of the contractor. All these facts make me to conclude that there existed no relationship of employer and employee between the claimants and the Authority.

17. Whether the claimants, who were employees of the Contractor, can maintain a dispute against the Authority? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

> "10. Prohibition of employment of contract labour:-
>
> (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
>
> (ii) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as —
>
> (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,
>
> (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
>
> (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
>
> (d) whether it is sufficient to employ considerable number of whole-time workmen.
>
> *Explanation*—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

18. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour-employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

> ". . . they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA- Act, no automatic absorption of contract labour working in the establishment was ordered, (2), Where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services-of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer."

19. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex, Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under Section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

20. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

21. In Shivnandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

22. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though drapped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and

real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

23. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with of without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimants can maintain this dispute against the Authority since they agitate that the contract agreement between the Authority and the Contractor is sham and nominal.

24. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard-to regulatory measures Section 7 requires the principal employer to get itself registered, while Section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the-provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of Sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of Section 7 or by the contractor in complying the provisions of Section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

25. In the Steel Authority of India (supra) the Apex Court laid emphasis ". . . the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on be violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

26. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the Authority? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. (1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

27. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with

by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.*** The legality of the direction given by the Industrial Tribunal abolishing contract to labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

28. In Gujrat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

> "53. Our conclusions and answers to the questions raised are, therefore, as follows:
>
> (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section No Court including the industrial adjudicator has jurisdiction to do so.
>
> (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
>
> (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

29. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract Labour Act.

30. Now, I would turn to the facts of present controversy. It is not a case where employee of contractor, employed in a statutory canteen has invoked jurisdiction of this Tribunal. This matter, as projected by the claimant is left to be approached on the proposition as to whether the contract agreement entered into between the Authority and the contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex. MW1/1. While interpreting Ex. MW1/1, this Tribunal cannot be oblivions of the rules viz., written instruments shall, if possible, be so interpreted "out res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

31. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

32. Whether Ex.MW1/1 and other related documents contain clauses which are contra bonos mores or forbidden by law? Ex. MW1/1 makes it dear that the work of horticulture features at Indira Gandhi International Airport, New Delhi, was awarded to M/s. Garden Pardise and estimated cost of work was Rs. 2,38,770.00. The contractor was supposed to carry out the work awarded to him for whole of the year. Ex. MW1/6 projects the schedule of quantity of work to be carried out. It has been detailed therein that development and maintenance of potted plants, watering, manuring, repotting, spraying, stacking are to be done by the contractor besides display and maintenance of potted plants in cement pots, indoor potted plants, maintenance of lawns and clipping of hedge. Quantity of potted plants and its rates are also mentioned there in the documents. These documents detail specific number of potted plants and maintenance work to be carried out by the contractor. Ex. MW1/7 projects that cow dung manure, good earth, neem oil cake, fungicides bavistin, insecticides and fertilizers were to be used by the contractor as per specification provided there. Ex. MW1/9 makes it clear that after negotiation, rates were reduced by the contractor. Ex. MW1/10 projects that the work was awarded to M/s. Garden Paradise at Rs. 2,45,550.00, which was 2.84% above the estimated cost.

33. Ex. MW1/1 was formal agreement executed between the parties. From Ex. MW1/5, it is apparent that notice inviting tender was given, in response of which M/s. Garden Paradise submitted its tender document. Negotiation was done and during the course of negotiation, the contractor reduced rates. The rates were 2.84% above cost estimates, which was within the permissible limits. Work was awarded to him, wherein schedule of quantity of display and maintenance of potted plants were specified. Manure and other materials, which were to be used by the contractor, are also provided in the contract agreement. Work of horticulture feature was to be performed by the contractor for a period of 12 months on unit rate basis. In view of these facts, I do not find any illegality in the contract entered into between M/s. Garden Paradise and the Authority. Since the contractor had to carry out work at unit rate basis, it engaged employees to discharge the contractual obligations. Therefore, it is emerging over record that contract agreement entered into between M/s. Garden Paradise and the Authority is in consonance with law. No clause is noticed therein which may project it to be sham or nominal document. Hence, no evidence came over record to conclude that the contract agreement was a perfect paper work made with an intention to evade labour laws, in respect of engagement of claimants and others.

35. Since the claimants were employees of the contractor, whose contract agreement is found to be genuine, there was no occasion available for the Authority to terminate services of Shri Chote Lal and Shri Mukesh Kumar on 4-5-2000 and 5-6-2000 respectively. The claimants have miserably failed to project that any action was taken by the Authority to dispense with their services. Under these circumstances, claim put forth by the claimants is liable to be discarded. Their claim is, accordingly, brushed aside. An award is passed in favour of the Authority and against the claimants. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated 6-7-2012

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 97/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2012 को प्राप्त हुआ था ।

[सं. एल-22011/17/2010-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 22-8-2012.

[No. L-22011/17/2010-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT

Dr. MANJU NIGAM Presiding Officer

I.D. No. 97/2011

Ref. No. L-22011/17/2010-IR (CM-II) dated: 09.05.2011

BETWEEN

The State Secretary
FCI Staff Union
TV/3V, Vibhuthi Khand
Gomotinagar
Lucknow

(Espousing case of Shri Harish Raj Arora)

AND

The General Manager
Food Corporation of India
TC/3V, Vibhuthi Khand
Gomotinagar
Lucknow

AWARD

1. By order No. L-22011/17/2010-IR (CM-II) dated 9-5-2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, FCI Staff Union, TV/3V, Vibhuthi Khand, Gomotinagar, Lucknow and the General Manager, Food Corporation of India, TC/3V, Vibhuthi Khand, Gomotinagar, Lucknow for adjudication.

2. The reference under adjudication is:—

"Whether the action of the Bhartiya Khadya Nigam Karmachari Sangh (A) to set asie order dated 14-2-2006 and reinstate the workman with all consequential benefits (b) to set aside penalty order dated 1-4-2005 and 27-2-2005 (c) to direct the opposite parties to pay leave encashment to the workman Shri Harish Raj Arora, to 2 up to the dated of retirement (d) to direct the management of Food Corporation of India to fix the pay of arrears thereon, is legal and justified, To what relief the workman concerned is entitled to ?"

3. The order of reference was endorsed to the State Secretary, FCI Staff Union, TV/3V, Vibhuthi Khand, Gomotinagar, Lucknow with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 31-05-2011 and the office was directed to issue registered notice to the workman for filing the statement of claim with list of reliance and list of witnessed before this Tribunal with advance copy to the management on 04-07-2011; and accordingly, registered notice was issued to the workman's union vide dated 09-06-2011. The notice was received back in the office un-served with the remark that "likhit pate par gyaat hua ki union yahan koi nahi hai atah preshak ko vaapas". Moreover, another registered notice vide dated 15-06-2012 was sent at the address of the workman's union provided in the reference order to appear before this Tribunal on 25-07-2012 and file its statement of claim. The workman's union did not turn up on 25-07-2012 also the envelop containing second notice was not received back in the office accordingly the service of the notice upon the workman's union was presumed and considering the fact of long pendency of the case before this Tribunal since 31-5-2011 and non-appearance of the party raising the dispute i.e. Bhartiya Khadya Nigam Karmachari Sangh and not filing claim statement since last about one year, the reference was reserved for award.

5. The reluctance of the workman's union in appearing before this Tribunal and filing their statement of claim indicates that the workman's union does not want to pursue its claim on the basis of which it has raised present industrial dispute.

6. Accordingly, the present reference order is decided as if there is no grievance left with the workman. Resultantly no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

7. Award as above.

Lucknow,
31-7-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान एरोनिटिकल लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, सं. 1, मुम्बई के पंचाट (आईडी संख्या 26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2012 को प्राप्त हुआ था ।

[सं. एल-42012/144/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Hindustan Aeronautics Limited, and their workmen, received by the Central Government on 22-8-2012.

[No. L-42012/144/2005-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present :

JUSTICE G.S.SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/26 OF 2006

Parties: Employers in relation to the management of Hindustan Aeronautics Ltd. (H.A.L.)

And

Their workman (A.M. Jadhav)

Appearances :

For the Management Shri V.H. Jahav, Adv.

For the workman Shri J.P. Sawant, Adv.

State : Maharashtra.

Mumbai, dated the 11th day of June, 2012.

AWARD PART-I

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:—

> "Whether the action of the management of HAL, Nashik in imposing penalty of stoppage of increment for a period of one year with cumulative effect in respect of Shri A.M. Jadhav is legal and justified? If not, to what relief is the workman entitled?"

According to the statement of claim submitted by H.A.L. (ND) Employees Union (hereinafter referred to as the Union) the workman A.M. Jadhav has been in the employment of H.A.L for the last 32 years and presently he is working in the capacity of Chief Supervisor. On 7-4-2000 B.S.Wilkoo, Manager (Security) while driving a motor cycle in a rash and negligent manner and under the influence of alcohol caused injury to the cyclist. D.E. Sapre who also happened to be H.A.L employee outside the factory premises. HAL employees rushed to the place of incident to help D.E. Sapre and expressed their displeasure against B.S. Wilkoo for his negligence. There was a crowd and there was exchange of words. The workman was in a meeting and after learning about the incident he went at the place of occurrence and tried to pacify the people. B.S.Wilkoo was taken to Ojhar Township Police Station and D.E. Sapre filed a complaint against him. Some members of the crowd manhandled B.S.Wilkoo because of his rude behaviour but the workman did not say anything. The workman was issued charge-sheet dt.19-4-2000 on the basis of the report of B.S. Wilkoo though the fact finding committee of the management did not find any substance in it. The management appointed Sudhir Kumar as Enquiry Officer and Saindanvise as Presenting Officer. The enquiry proceeded against the workman and another person S.S. Jadhav in order to victimize them as they were acting members of the Union. The principles of natural justice were violated while conducting the enquiry and the findings of the Enquiry Officer are totally perverse on the grounds as stated in para no. 8 of the statement of claim. The workman was punished with stoppage of increment for a period of one year with cumulative effect while S.S. Jadhav who was also a party to the joint enquiry was punished with stoppage of increment for a period of one year without cumulative effect. The disciplinary authority and the appellate authority merely concurred with the findings of the enquiry officer without application of mind. According to the statement of claim the action of the management in imposing the penalty of stoppage of increment for a period of one year with cumulative effect against the workman is illegal and unjustified.

According to the written statement the workman was directly involved in the incident. The workman fully participated in the departmental enquiry. The workman

cross-examined the management witnesses and examined as many as ten witnesses in defence. Principles of natural justice were followed while conducting the enquiry. The management rather took a lenient view in the matter. The charge against the workman is more serious as compared to S.S.Jadhav. It has been prayed that the reference be dismissed.

The Union has filed rejoinder wherein it has reiterated its stand taken in the statement of claim.

Following issues have been framed on 5-4-2007.

(1) Whether the principles of natural justice have been followed by the management while conducting disciplinary proceedings against the workman?

(2) Whether the findings of the Enquiry Officer are perverse?

(3) Whether the punishment of 'stoppage of increment for period of one year with cumulative effect, imposed upon the workman is disproportionate to the gravity of alleged misconduct?

(4) To what relief, if any, the workman is entitled?

The workman A.M.Jadhav has filed his affidavit and he has been cross examined by learned counsel for the first party. The first party has examined Dilip Saindanvise and he has been cross examined by learned counsel for the Union.

Heard Shri J.P.Sawant, learned counsel for the Union and Shri V.H.Jadhav learned cousel for the 1st party.

ISSUE NO.1: The workman A.M.Jadhav has stated in his cross examination. This is correct that I participated in the enquiry from the beginning till the end. This is correct that the management produced three witnesses who were cross examined by my defence representative. This is correct that I produced 10 witnesses. I produced documents. This is correct that at the end of enquiry I filed my statement in defence..... This is correct that I was given a copy of the enquiry report. This is correct that I was given show cause notice thereafter. I filed reply of the show cause notice..... I have signed the order sheets of the enquiry.....

The above statement of the workman himself makes it absolutely clear that there is no substance in the allegation that the principles of natural justice, were not followed while conducting the enquiry.

The requirement of natural justice are (a) the workman should know the nature of accusation (b) he should have an opportunity to state his case(c) the management should act in good faith which means that the action of the management should be fair, reasonable and just. All these three requirements have been fully met in the instant case. It is thus clear that there has been no violation of principles of natural justice while conducting disciplinary proceedings against the workman.

Issue no.1 is therefore, decided against the workman and in favour of the first party.

ISSUE NO. 2: A perusal of the enquiry report reveals that the Enquiry officer has discussed and analysed the evidence produced by the rival parties and his conclusions are based on the evidence available on the record. there is thus no perversity in the findings of the Enquiry Officer.

Issue no.2 is, therefore, decided against the workman and in favour of the first party.

The reference will go on for hearing for part-II Award for which put upon 2-7-2012

JUSTICE G. S. SARRAF, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1,

MUMBAI

Present

JUSTICE G. S. SARRAF

Presiding Officer

Reference No.CGIT-1/26 OF 2006

Parties: Employers in relation to the management of Hindustan Aeronautics Ltd (H.A.L.)

And

Their workman (A.M.Jadhav)

Appearances:

For the Management	:	Shri V.H.Jadhav, Adv.
For the workman	:	Shri J.P.Sawant, Adv.
State	:	Maharashtra

Mumbai dated the 30th day of July, 2012.

AWARD PART-II

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:—

Whether the action of the management of HAL, Nashik in imposing penalty of stoppage of increment for a period of one year with cumulative effect in respect of Shri A.M. Jadhav is legal and justified? If not, to what relief is the workman entitled?

It is not necessary to narrate the facts here because the facts have been stated in detail in the Award Part-I passed by this Tribunal on 11-6-2012.

Following issues were framed :

(1) Whether the principles of natural justice have been followed by the management while conducting disciplinary proceedings against the workman ?

(2) Whether the findings of the Enquiry Officer are perverse?

(3) Whether the punishment of 'stoppage of increment for period of one year with cumulative effect' imposed upon the workman is disproportionate to the gravity of alleged misconduct?

(4) To what relief, if any, the workman is entitled?

Issues nos. 1 and 2 have been decided against the workman.

Heard rival submissions on the remaining issues.

ISSUE NO. 3: Once there has been an enquiry in accordance with the principles of natural justice and the findings recorded at that enquiry are not frowned upon then this Tribunal should not interfere with the quantum of punishment unless the punishment is shwn to be vitiated by malafides. This certainaly is not the position in the present case.

Considering all facts and circumstances of the matter I do not think that the punishment of stoppage of increment for a period of one year with cumulative effect imposed upon the workman is shockingly disproportionate to the charge levelled against him so as to warrant interference by this Tribunal.

Issue no. 3 is decided against the workman.

ISSUE NO.4:

The workman is not entitled to any relief.

Award Part-II is passed accordingly.

G. S. SARRAF, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 36/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2012 को प्राप्त हुआ था ।

[सं. एल-42012/111/2003-आई आर (सीएम- II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/04) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Central Public Works Department, and their workmen, received by the Central Government on 22-8-2012.

[No. L-42012/111/2003-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/36/2004 Date: 27-07-2012

Party No.1 : The Executive Engineer
Central Public Works Department
Division no.I, Katol Road, Nagpur.

Versus

Party No.2 : Shri Yuvraj Thapa
Type-II Qtr. No. 322 (New),
Near Community Hall, Seminary Hills,
Nagpur-~~440006~~

AWARD

(Dated: 27th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section l0 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of CPWD and Shri Yuvraj Thapa, for adjudication, as per letter No.L-42012/111/2003-IR (CM-II) dated 12-03-2004, with the following schedule:—

"Whether the action of the management of CPWD, Division no.1, Nagpur through its Executive Engineer, Nagpur in terminating the service of She Yuvraj Thapa w.e.f. 30-08-2002 by an order dated 29-08-2002 is legal & justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, Shri Yuvraj Thapa, ("Party no.2" in short), filed the statement of claim and the management of CPWD, ("Party No. I" in short) filed its written statement.

The case of the party no.2 as presented in the statement of claim is that he is a workman and party no. 1 is an industry and he was appointed in the post of "Beldar" in the office of party no. 1 w.e.f. 08-08-1991 on daily rated basis and the copy of letter dated 16-04-1998 shows that he was engaged as a casual worker by party no.1 and since the date of his appointment, he was working continuously on the post and his service record was clean and excellent, without any stigma and the copy of the proforma issued by party no. 1 supports the case of his engagement in service including the initial date of appointment and the party no. 1 illegally terminated his services w.e.f.

30-08-2002 and he had worked for more than 240 days prior to the 12 months of the date of his such illegal termination.

The further case of the party no. 2 is that he had been granted the pay scale as per recommendation of the fifth Central Pay Commission and the copy of memorandum dated 24-10-1997 and the copy of due-drawn-cum-pay voucher for DA arrears dated 23-7-1997 support his contention that he was granted the benefit of 5th Central Pay Commission and Government of India made datailed survey for regularisation of daily wage workers. who have put long years of service like him and office memorandum dated 5-1-2000 was issued by the Government of India in this regard and inthe above said background, he was working contiuously with the bonafied expectation that some time his services would be regularized, but by the impugned order,all his expectations were ruined. It is further pleaded by the party no.2 that as per letter dated 28-6-2002, the party no.1 was asked to furnish a certificate that no person is engaged or employed on work order basis and as such he was informed by party no. 1orally about termination of his services with immediate effect and subsequently, party no.1 issued an order on 29-08-002 terminating his services w.e.f. 30-08-2002 and the termination of his services was without following the due procedure of law and without observing the principles of natural justice and at the time of termination of his services, party no.1 did not follow the rule of seniority and retained several juniors in service and before termination of his services, neither any notice nor any wages in lieu of notice nor" retrenchment compensation was given by party no. 1 to him and as such, the order of termination of his services dated 29-08-2002 is illegal and deserves to be quashed and set aside and he is entitled to be reinstated in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the party no.2 was a contractor, who was engaged on work order basis and he was not a workman and as such, this Tribunal has no jurisdiction to entertain the dispute and party no.2 was engaged on contract basis on monthly work order, whenever there was such requirement by it and he was never employed by it and a ban was put by the Director General (works), New Delhi for contractual engagement by the letter dated 08-05-2002 and as such, the contract of the workman was brought to an end there was no illegality in its action and the party no.2 was not engaged continuously till 30-08-2002 and contract issued to party no.2 was purely on temporary basis, with a specific condition that the same can be terminated at any point of time without giving any notice and as party no.2 was engaged on contract basis, the question of employment or his termination does not arise at all. The party no. 1 in its written statement has denied all the allegations made in the statement of claim and pleaded that the party no. 1 is not entitled to any relief.

4. It is necessary to mention here that though the party no.2 had filed his evidence on affidavit, he did not appear for cross-examination inspite of giving him number of opportunities for the same and lastly, as per orders dated 07-09-2012, the evidence of the workman on affidavit was expunged and evidence from his side was closed.

It is also necessary to mention here that party no. 1 also did not adduce any oral evidence in support of its stand and placed reliance on documents produced by it.

As neither the workman nor anybody on his behalf appeared on 04-05-2012, to which date the case was fixed for argument, order was passed to proceed with the case exparte against the workman and after submission of written notes of argument from the side of party no. 1, the case was closed and fixed for award.

5. It is well settled that when a workman raises a dispute challenging the validity of the termination of his services, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in his favour and he could not be entitled to any relief.

6. In this case, though the party no. 2 had filed the statement of claim challenging the order of his termination from services, he did not adduce any evidence in support of the claim. So, applying the settled principles as mentioned above to the present case in hand, it is found that the reference cannot be answered in favour of the party no.2.

Moreover, from the documents filed by the party no.1, it is found that the party no.2 was engaged as a contractor to attend all day to day maintenance work and up keepment of I. B.M. (HQ) building by work order from month to month on temporary basis. It is also found from the documents that there were stipulations in the work order that the order can be terminated at any time without notice and there should not be any claim for regularisation in Government services and the party no. 2 accepted the conditions as mentioned in the work order and executed the contract by working himself. It is also found from record that due to the ban imposed by the Government, the party no. 2 was intimated vide letter dated 29-08-2002 by party no.1 that his services were no more required and the work order issued be treated as cancelled and not to provide services of unskilled labour/coolies from 30-08-2002. So it is clear from the materials on record that the party no. 2 was never engaged as a workman by party no.1 and there was no question of termination of the services of the workman. So, there is also no question of compliance of the provisions of Section 25-F and 25-G of the Act. Hence, it is ordered:

ORDER

The reference is answered in negative i.e. against the party no.2, Shri Yuvraj Thapa. Shri Yuvraj Thapa is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जोधपुर के पंचाट (संदर्भ संख्या 10/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2012 को प्राप्त हुआ था ।

[सं. एल-22014/01/1997-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/1997) of the Industrial Tribunal-cum-Labour Court, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 22-8-2012.

[No. L-22014/01/1997-IR (C-II)]

B. M. PATNAIK, Section Officer

अनुबन्ध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री एच. आर. नागौरी, आर. एच., जे. एस.

औद्योगिक विवाद् (केन्द्रीय) संख्या 10 सन् 1997 श्री छोटुखां पुत्र श्री सुलतान खान, फौजदार ठिकाना बम्बा मोहल्ला, जोधपुर []/[] . श्रमिक प्रतिनिधि नरेन्द्र आचार्य ऑल इण्डिया ट्रेड यूनियन कॉंग्रेस (एटक) .....प्रार्थी

बनाम

जिला प्रबन्धक, भारतीय खाद्य निगम, बी-632 रेजीडेन्सी रोड, जोधपुर

.....अप्रार्थी

उपस्थिति:—(1) प्रार्थी के प्रतिनिधी- श्री आर. एस. सालूजा व श्री डी. पी. पुजारी उप.

(2) अप्रार्थी के प्रतिनिधि श्री महेन्द्र कुमार त्रिवेदी उप.।

अधिनिर्णय

दिनांक 2-7-2012

भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल.-22012/01/97-आई. आर. (सी. II) नई दिल्ली 30-7-1997 के द्वारा निम्न विवाद् अधिनिर्णय हेतु न्यायालय को प्रेषित किया गया है:—

"Whether the demand of Sh. Chhotu Khan and 114 other workmen (list enclosed) of FSD. FCI, Jodhpur for regularisation of their services in FCI is legal and justified? If not, to what relief are the workmen entitled and from which date ?"

2. प्रार्थी श्री छोटु खान पुत्र श्री सुलतान खान ने प्रारम्भ में अपना मांग-पत्र जरिये श्रमिक प्रतिनिधि नरेन्द्र आचार्य ऑल इण्डिया ट्रेड यूनियन कॉंग्रेस (एटक) प्रस्तुत किया था बाद में प्रार्थी श्री छोटु खान ने अपना माँग-पत्र अपने व्यक्तिगत् नाम से प्रस्तुत किया है । प्रार्थी ने अपने संशोधित माँग-पत्र में यह उल्लेख किया है कि निम्न प्रार्थीगण अप्रार्थी संस्थान में जरिए कोन्ट्रेक्टर लम्बे अर्से से कार्यरत रहे हैं। उनके अप्रार्थी संस्थान में कार्य प्रारम्भ करने के वर्ष को उनके नाम के आगे अंकित किया है ।

क्रमांक	मजदूरों का नाम	पिता का नाम	नियुक्ति का प्रथम वर्ष
(1)	(2)	(3)	(4)
1.	श्री छोटु खान	सुलतान खान	1971
2.	श्री इकबाल खान	अल्लादीन खान	1978
3.	श्री सत्तार खान	गुलाब खान	1978
4.	श्री सुखराम गुजर	नारायण गुजर	1978
5.	श्री इसलामुद्धीन	अल्लादीन खान	1975
6.	श्री रेमत खान	धोकल खान	1981
7.	श्री सतु	अखाराम	1980
8.	श्री बसीर खान	दावत खान	1960
9.	श्री मुल्लाजी	जीवन	1971
10.	श्री हकीम खान	मोहम्मद जी	1975
11.	श्री सबीर खान	जमाल खान	1960
12.	श्री बाबुखान	अल्लादीन खान	1978
13.	श्री वल्ली मोहम्मद	नाजीर खान	1978
14.	श्री अन्ना खान	कालूखान	1975
15.	श्री कानसिंह	ईश्वरसिंह	1975
16.	श्री नीसार खान	रामदीन खान	1971
17.	श्री बरकत खान	बाबु खाँ	1980
18.	श्री कीशोरसिंह	मानसिंह	1980
19.	श्री केसाराम	मानाराम	1980
20.	श्री फकीर मोहम्मद	घीसा खान	—
21.	श्री जनालू खान	कामी खान	1980
22.	श्री रामजान खान	सीमर खान	1978
23.	श्री साफी खान	सुलेमान खान	1980

(1)	(2)	(3)	(4)
24.	श्री वल्ली मोहम्मद	नागोदर खान	1980
25.	श्री इल्लयात	नागोदर खान	1980
26.	श्री लक्ष्मण	बद्रीजी	1975
27.	श्री अनवर लोगा	मुल्लाजी	1980
28.	श्री हेमाराम	उम्मेद राम	1981
29.	श्री रफीक	सफी खाँ	1981
30.	श्री प्रेमसिंह	बालुसिंह	1975
31.	श्री रसूल खान	मीरा खान	1980
32.	श्री जुमा	श्री मोहम्मद जी	1980
33.	श्री मुसा खान	मेबुब खाँ	1980
34.	श्री सकूर जाया	नामालुम	1980
35.	श्री समील खान	दीना खान	1980
36.	श्री इबराहीम	नामालुम	1980
37	श्री सऊखान	अखे मोहम्मद	1980
38.	श्री झासीराम	शंकर राम	1980
39.	श्री ताराराम	हरदनराम	1975
40.	श्री हबीब खान	मेहबूब खान	1981
41.	श्री कादर खान	इस्माईल खान	1981
42.	श्री सातीर खान	फाजल खान	1981
43.	श्री शरीफ खान	भोलाबक्स	1981
44.	श्री बीरबलराम	फजलूराम	1981
45.	श्री नेमीचन्द	मोहनजी	1978
46.	श्री सौभागराम	मानाराम	1982
47.	श्री सरूप सिंह	बालुसिंह	1982
48.	श्री हनीफ खान	नीना खान	1981
49.	श्री सावा सिंह	हरलालसिंह	1982
50.	श्री तेजसिंह	हरलालसिंह	1982
51.	श्री दीपसिंह	खजूसिंह	1982
52.	श्री हनुमानसिंह	इन्दर सिंह	1984
53.	श्री मोग सिंह	हजारी सिंह	1982
54.	श्री प्रभु सिंह	मोहन सिंह	1982
55.	श्री किशोर सिंह	मोहन सिंह	1982
56.	श्री हरसुखराम	गोकलराम	1982
57.	श्री बचनाराम	अमराराम	1982
58.	श्री सलीम खान	अल्लादीन खान	1982
59.	श्री हनुमान	रीदमलराम	1982
60.	श्री नीताराम	रामरख राम	1982
61.	श्री मोहन राम	बगताराम	1982
62.	श्री बाबाराम	हीराराम	1984
63.	श्री बाघाराम	जगमलजी	1984
64.	श्री अमर राम	असुराम	1984
65.	श्री खेराज राम	आसुराम	1984
66.	श्री मोहनराम	दीपुराम	1984
67.	श्री अयाब खान	सफी खान	1984
68.	श्री सलीम खान	अनवर खान	1984
69.	श्रीमति तेजादेवी	हनुमान जी	1984
70.	श्री रमेश	लक्ष्मणराम	1984
71.	श्रीमति सुवा देवी	लक्ष्मणराम	1984
72.	श्रीमति कालकी देवी	भासत जी	1975
73.	श्रीमति धापु देवी	कानाराम	1975
74.	श्रीमति रूकमादेवी	जोगाराम	1981
75.	श्रीमति लुम्बादेवी	सुखराम	1984
76.	श्री मान	प्रतापसिंह	1981
77.	श्री [illegible]	अनवर खान	1981
78.	श्री धानी खान	अल्लादीन खान	1975
79.	श्री भागीरथ	अन्नारामजी	1975
80.	श्री जबरू	खजू खान	1981
81.	श्री कल्याणसिंह	दीपसिंह	1978
82.	श्री हबीब खान	मेहबूब खान	1981
83.	श्री शमसुद्दीन	नामालुम	1982
84.	श्री घीसा खान	गबरू खान	1980
85.	श्रीमती रसीदा	सत्तार खान	1981
86.	श्री अब्दुल हमीद	अब्दुल रसीद	1983
87	श्री अब्दुल रफीक	अब्दुल सकूर	1983
88.	श्री रमजान	इस्सापु	1984
89.	श्री बंशी	जोगाराम	1984
90.	श्री रूसतम खान	जुम्मा खान	1982
91.	श्री गफूर खान	भीखे खाँ	1982
92.	श्री अल्लानुर	नामालुम	1982
93.	श्री जोधाराम	कानाराम	1984
94.	श्री कालूखान	नामालुम	1980
95.	श्री खेताराम	गुकलराम	1981

(1)	(2)	(3)	(4)
96.	श्री अर्जुनराम	डोलाराम	1983
97.	श्री मालाराम	डोलाराम	1983
98.	श्री दानुराम	डोकल जी	1982
99.	श्री बागारम	जीवन राम	1984
100.	श्री बाबू खीचेरी	रामूराम	1984
101.	श्री मनोहरराम	छत्तरा राम	1981
102.	श्री पुनमराम	मुलाराम	1984
103.	श्रीमति छुकी	नामालुम	1982
104.	श्री मूलसिंह	अमनसिंह	1984
105.	श्री दीन मोहम्मद	नामालुम	1982
106.	श्री भगवानदास	श्यामसुन्दर	1984
107.	श्री खेताराम	हरसुखराम	1984
108.	श्री मेघसिंह	अमरसिंह	1984
109.	श्रीमति अनेहलीदेवी	नामालुम	1984
110.	श्री गफार खाँ	मजीत खाँ	1984
111.	श्री रामूराम	गोपाराम	1984
112.	श्री करणसिंह	भीमसिंह	1984
113.	श्रीमति कमला	लादुराम	1982
114.	श्रीममि पनकी	भुरजाराम	1984
115.	श्री ढल्लाराम	मुलाराम	1984

3. प्रार्थी ने यह उल्लेख किया है कि उक्त सभी कर्मकार माननीय उच्च न्यायालय के समक्ष प्रस्तुत रिट याचिका में जरिये प्रार्थी छोटु खान पक्षकार थे । प्रार्थी श्री छोटु खान को इसके लिए अधिकृत किया गया था । प्रार्थी ने यह उल्लेख किया है कि इसी वजह से रेफरेन्स भी समस्त कर्मकारों के अधिकारों को नियत करने हेतु इस न्यायालय को प्रेषित हुआ है। प्रार्थी ने उल्लेख किया है कि अप्रार्थी संस्थान में कोन्ट्रेक्ट लेबरप्रथा केन्द्रीय सरकार द्वारा अधिसूचना दिनांक 1-11-1990 द्वारा समाप्त कर दी गई यह अधिसूचना अप्रार्थी संस्थान के 62 डिपो के सन्दर्भ में जारी की गई थी इस सूची में जोधपुर में स्थित दोनों डिपो के नाम भी सम्मिलित है । यह कदम सरकार द्वारा कोन्ट्रेक्ट लेबर रेगुलेशन एण्ड एबोलीशन एक्ट, 1970 की धारा 10 ए के अन्तर्गत लिया है ।

4. प्रार्थी ने आगे उल्लेख किया है कि उक्त अधिसूचना के आधार पर अप्रार्थी फूड कोरपोरेशन ऑफ इण्डिया द्वारा कोन्ट्रेक्ट लेबर से संबधित कर्मचारियों को अप्रार्थी संस्थान में स्थाई नियुक्ति देने के आशय से दिनांक 22-1-1991 तथा 11-6-1991 को आदेश पारित किये गये थे। यह आदेश अप्रार्थी संस्थान तथा यूनियन के मध्य किये गये सैटलमेन्ट को प्रभाव देने के लिए भी जारी किया जाना आवश्यक हो गया था । प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी द्वारा एफ.सी.आई. वर्क्स यूनियन से किया गया समझौता दिनांक 12-4-1997 की शर्त संख्या-3 के अन्तर्गत उक्त कर्मचारियों के नियमन हेतु गत् तीन वर्षों की समयावधि में कार्य कर रहे कर्मचारियों की ही वरिष्ठता सूची को मानदण्ड बनाया गया। प्रार्थी ने यह उल्लेख किया है कि यह अवैधानिक है । इसका आधार यह बताया गया है कि इस शर्त द्वारा प्रार्थीगण की वर्षों की मेहनत अन्य कर्मचारियों के मुकाबले बेकार कर दी गई । प्रार्थी ने यह उल्लेख किया है कि समझौते की यह शर्त गैर-जरूरी तथा कोन्ट्रेक्ट लेबर का नियमन जारी किये जाने के लिए जारी नोटिफिकेशन की भावना के विपरीत है । प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी संस्थान ने कर्मचारियों के नियमन करने के लिए अप्रार्थी संस्थान द्वारा दो वरिष्ठता सूचियाँ तैयार की गई । इनमें से एक वरिष्ठता सूची अप्रार्थी संस्थान में दिनांक 24-7-1991 को कार्य कर रहे श्रमिकों की थी । तथा द्वितीय वरिष्ठता सूची में सन 1986 से सन 1990 तक कार्यरत श्रमिकों का नाम ही सम्मिलित किया गया । प्रार्थी ने यह उल्लेख किया है कि यह सूची अन्तिम रूप से तैयार की गई और इसके पूर्व कोई प्रावेधिक सूची तैयार नहीं की गई । व्यथित श्रमिकों को इस सम्बन्ध में कोई एतराज प्रस्तुत करने का अवसर नहीं दिया गया । यह सूची सैटलमेन्ट के अनुसार तैयार नहीं की गई थी इन सूचियों में प्रार्थी श्रमिकगण में से किसी भी श्रमिक का नाम सम्मिलित नहीं किया गया। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी द्वारा तैयार की गई सूची से स्पष्ट है कि अप्रार्थीगण ने प्रार्थी की वरिष्ठता को नजरन्दाज करते हुए मनमाने तरीके से स्थायी नियुक्तियाँ दी हैं इन दोनों सूचियों का अवलोकन करने से यह स्पष्ट है कि इन सूचियों में सम्मिलित श्रमिकों से प्रार्थीगण की सेवा अवधि लम्बी है । प्रार्थीगण की सेवा की अवधि उक्त सूची में वर्णित श्रमिकों की सेवा अवधि से लम्बी होने के उपरान्त भी प्रार्थी श्रमिकगण का नाम उक्त सूचियों में सम्मिलित नहीं किया जाना अवैधानिक है।

5. प्रार्थी ने अपने माँग-पत्र में आगे यह उल्लेख किया है कि अप्रार्थीगण के इस कृत्य से व्यथित होकर प्रार्थी ने एक रिट याचिका संख्या 4291 सन 1991 प्रस्तुत की । प्रार्थी ने यह उल्लेख किया है कि अप्रार्थीगण ने प्रार्थीगण के भुगतान से संबधित ई. पी.एफ. की राशि नियमानुसार काटी गई थी इसका इन्द्राज अप्रार्थी एफ.सी. आई. के पास मौजूद रजिस्टर में है । उक्त आधारों पर प्रार्थी ने प्रार्थना की है कि अप्रार्थीगण को निर्देश दिया जावे कि वह वरिष्ठता सूची सेवा की अवधि ध्यान में रखकर तैयार करे तथा सूची अनुसार श्रमिकों को नियमित नियुक्ति प्रदान करे ।

6. अप्रार्थीगण ने अपने संशोधित जवाब में उल्लेख किया है कि प्रस्तुत माँग-पत्र केवल प्रार्थी छोटु खान ने ही अपने प्रतिनिधि नरेन्द्र आचार्य के जरिये पेश किया है । अपने माँग-पत्र में जिन 115 व्यक्तियों का उल्लेख किया गया है वे इस मामले में प्रार्थी नहीं हैं । अप्रार्थी ने यह उल्लेख किया है कि माँग-पत्र में उल्लेख की गई श्रमिकों की सूची में क्रम संख्या 2 से 115 तक के श्रमिक इस न्यायालय से कोई अनुतोष प्राप्त नहीं कर सकते हैं । इस सूची में वर्णित क्रम संख्या 2 से 115 संख्या पर अंकित श्रमिकों की ओर से यह माँग-पत्र प्रस्तुत नहीं किया गया है और इन व्यक्तियों की ओर से श्रमिक श्री नरेन्द्र आचार्य अथवा प्रार्थी श्री छोटु खान को कोई ऑथोरिटी प्रदान नहीं की है । प्रार्थी ने अपने आपको लीडर मानते

हुए क्लेम में दर्शाये कथित 115 व्यक्तियों की ओर से यह माँग-पत्र प्रस्तुत किया है, लेकिन प्रार्थी को इन व्यक्तियों ने कोई ऑथोराईजेशन नहीं दिया है ।

7. अप्रार्थी संस्थान ने आगे यह उल्लेख किया है कि प्रार्थी छोटु खान इस मामले में स्वच्छ हाथों से नहीं आया है। अप्रार्थी संस्थान ने अप्रार्थी भारतीय खाद्य निगम के अधिकारियों तथा मान्यता-प्राप्त यूनियन के बीच दिनांक 12-4-1991 के समझौते के अनुसार ही मामला तय किया था । भारतीय खाद्य निगम द्वारा जो मान्यताप्राप्त यूनियन है उसके द्वारा कोई शिकायत 12-4-1991 के समझौते के खिलाफ नहीं की गई है । प्रार्थी यह बताने मे असमर्थ रहा है कि क्या वह उक्त मान्यताप्राप्त यूनियन का सदस्य था । अप्रार्थी संस्थान ने यह उल्लेख किया है कि यह मामला केवल मान्यताप्राप्त यूनियन के द्वारा ही उठाया जा सकता है । अकेले प्रार्थी द्वारा यह मामला नहीं उठाया जा सकता है । प्रार्थी यदि उक्त यूनियन में सदस्य अथवा पदाधिकारी नहीं है तो उसे मौजूदा मामला उठाने का कोई अधिकार नहीं है । उक्त 115 व्यक्तियों ने अपनी ओर से कोई क्लेम प्रस्तुत नहीं किया है । अप्रार्थी संस्थान ने यह उल्लेख किया है कि इस तथ्य से यह स्पष्ट है कि वे इस मामले में इन्टरस्टेड नहीं है । प्रार्थी मान्यताप्राप्त यूनियन के माध्यम से ही यह क्लेम उठाने का अधिकारी है।

8. अप्रार्थी संस्थान ने यह उल्लेख किया है कि प्रार्थी ने एक रिट याचिका संख्या 4291 सन् 1991 छोटु खान बनाम भारतीय खाद्य निगम इत्यादी प्रस्तुत की । उस रिट याचिका में प्रार्थी श्री छोटु खान ने हल्फनामा प्रस्तुत किया था उसमें उसने अपनी आयु 50 वर्ष दर्शाई है। जब कि छोटु खान की ओर से अप्रार्थी के यहाँ इ.पी.एफ. स्कीम में पेंशन बाबत फार्म में प्रार्थी ने अपनी आयु 55 वर्ष दर्शाई है। प्रार्थी ने यह क्लेम सन् 1997 में प्रस्तुत किया है । अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी ने जानबुझकर तथ्य छिपाये हैं । प्रार्थी रेग्युलेशन 22 एफ.सी.आई. स्टाफ रेग्युलेशन के तहत कोई दादरसी प्राप्त करने का अधिकारी नहीं है। इस तथ्य को गलत बताया है कि माननीय उच्च न्यायालय के समक्ष प्रस्तुत रिट याचिका में सभी तथ्य जरिये छोटु खान पक्षकार थे।

9. अप्रार्थी संस्थान ने यह उल्लेख किया है कि अप्रार्थी भारतीय खाद्य निगम तथा भारतीय खाद्य निगम वर्कर यूनियन के बीच दिनांक 12-4-1991को एक समझौता इसी विवाद् बाबत हुआ था दोनों पक्षों की सहमती से ही दिनांक 12-4-1991 को यह समझौता निष्पादित किया गया था। अप्रार्थी संस्थान ने यह उल्लेख किया है कि जब प्रार्थी तथा अप्रार्थी दोनों ही दिनांक 12-4-1991 के एग्रीमेन्ट को स्वीकार करते हैं तो ऐसी अवस्था में प्रार्थी छोटु खान के इस मामले का कोई औचित्य नहीं है । प्रार्थी इण्डस्ट्रीयल हारमॉनी बिगाड़ना चाहता है । प्रार्थी ने यह स्पष्ट नहीं किया है कि प्रार्थी छोटु खान तथा अन्य व्यक्ति किस यूनियन से संबंधित हैं तथा इस यूनियन का बैनर क्या है। श्री नरेन्द्र आचार्य एटक में क्या हैसियत रखते हैं इसका भी कोई खुलास नहीं किया गया है । यह क्लेम औद्योगिक विवाद् अधिनियम की धारा 10 की परिधि में नहीं आता है । प्रार्थी तथा अप्रार्थी के बीच मास्टर एण्ड सर्वेन्ट का सम्बन्ध नहीं है।

10. अप्रार्थी संस्थान ने अपने जवाब माँग-पत्र में आगे यह उल्लेख किया है कि प्रार्थी ने अपने माँग-पत्र में केवल 15 व्यक्तियों के नाम दर्शाये हैं । वर्तमान में यह व्यक्ति अप्रार्थी संस्थान में काम नहीं करते हैं । इनमें से कुछ व्यक्ति तो वर्ष 70-71 तक ही अप्रार्थी के यहाँ कार्य कर रहे थे । कुछ इसके पश्चात् वर्षों में काम पर रहे लेकिन वे भी चले गये। प्रार्थी तथा जहाँ तक कुछ अन्य व्यक्तियों का प्रश्न है उन्होंने वर्ष 1988 तक ही भारतीय खाद्य निगम में कार्य किया है । ये सभी व्यक्ति भारतीय खाद्य निगम द्वारा नियुक्त नहीं किये गये थे। वे केवल मात्र उस वक्त में प्रचलित ठेकेदारी प्रथा के अन्तर्गत ठेकेदार द्वारा ही काम पर रखे गये थे । प्रार्थी तथा माँग-पत्र की चरण संख्या-1 में वर्णित सभी व्यक्ति अप्रार्थी भारतीय खाद्य निगम के कर्मचारी नहीं रहे । प्रार्थी ने मांग-पत्र की चरण संख्या-1 में उल्लेख किये गये व्यक्तियों को कार्य करने की जो तिथि बताई है वह गलत है ।

11. अप्रार्थी ने इस तथ्य को गलत बताया है कि जोधपुर में दो डिपो स्थित हैं। अप्रार्थी ने उल्लेख किया है कि जोधपुर में केवल मात्र एक ही डिपो है । अधिसूचना 62 डिपुओं के सम्बन्ध में जारी नहीं हुई बल्कि 99 डिपुओं के सम्बन्ध में जारी की गई थी । दिनांक 22-1-1991 का आदेश वास्तव में एक डी.ओ. लेटर है। यह पत्र ठेकेदारी प्रथा समाप्ति के लिए भारत सरकार के निर्णय की अधिसूचना के सन्दर्भ में जारी किया गया था । इसके तहत तमाम डिपो में कार्यरत अन्य व्यक्तियों के रिकोर्ड को मेन्टेन करने के लिए जारी किया गया था । दिनांक 11-6-1991 का सर्कूलर भी समझौता दिनांक 12-4-1991 को लागू करने के लिए किया गया था । इसके तहत 99 डिपुओं के लेबर का स्ट्रेन्थ तय करने तथा उनका आईडेन्टीफिकेशन जारी करने के लिए जारी किया गया था। यह तथ्य गलत है कि ये दोनों सर्कूलर 22-1-1991 तथा 11-6-1991 अप्रार्थी संस्थान में स्थायी नियुक्ति देने के आशय से जारी किये गये थे।

12. अप्रार्थी संस्थान ने आगे यह उल्लेख किया है कि मान्यता-प्राप्त यूनियन तथा भारतीय खाद्य निगम के मध्य निष्पादित समझौता दिनांक 12-4-1991 की शर्त संख्या-3 के अन्तर्गत केवल तीन वर्षों की समयावधि में किये गये कार्य को ही मानदण्ड बनाकर वरिष्ठता निर्धारित करने तथा नियमन करने की बात कतई अवैधानिक नहीं है। अप्रार्थी संस्थान ने यह उल्लेख किया है कि मान्यताप्राप्त यूनियन तथा अप्रार्थी के मध्य हुए समझौता दिनांक 12-4-1991 की शर्त संख्या-3 को अब इतने विलम्ब की स्टेज पर अवैधानिक घोषित नहीं किया जा सकता । एक बार जो समझौता दिनांक 12-4-1991 उसके पक्षकारों के मध्य हो गया उसे अथवा उसकी किसी शर्त को रिओपन करवाने का प्रार्थी को कोई अधिकार नहीं है । जिन पक्षों के मध्य यह समझौता हुआ है उसे रिओपन करवाने का अधिकार भी उन्हीं पक्षों को है । समझौता दिनांक 12-4-1991 की किसी शर्त को इस न्यायालय द्वारा अवैधानिक करार नहीं करवाया जा सकता है । अप्रार्थी संस्थान ने यह उल्लेख किया है कि समझौते की कोई शर्त गैर जरूरी नहीं है। समझौता की कोई शर्त उस नोटिफिकेशन की भावना के विपरित नहीं है जिसके अन्तर्गत कोन्ट्रेक्ट लेबर का नियमन किया जाना तय किया गया था ।

13. अप्रार्थी ने इस तथ्य को गलत बताया है कि अप्रार्थी संस्थान द्वारा दो वरिष्ठता सूचियां तैयार की गई थी । अप्रार्थी संस्थान ने उल्लेख किया है कि दोनों वरिष्ठता सूचियाँ भारतीय खाद्य निगम वर्कर यूनियन द्वारा ही तैयार की गई थी और इन्हें अप्रार्थी को भेजा गया था । इस तथ्य

को गलत बताया है कि वरिष्ठता जारी करने से पूर्व व्यथित व्यक्तियों को एतराज प्रस्तुत करने का अवसर नहीं दिया गया । दोनों वरिष्ठता सूचियां अप्रार्थीगण ने जारी नहीं की थी । यदि प्रार्थी अथवा किसी श्रमिक को इसके सम्बन्ध में आपत्ति थी तो वह अपनी शिकायत अपनी यूनियन के माध्यम से पहुँचा सकता है । यह दोनों वरिष्ठता सूचियाँ यूनियन ने तैयार कर अप्रार्थी को प्रस्तुत की थी । अप्रार्थी ने इसमें कतई अपनी सहमती नहीं दी है । इन वरिष्ठता सूचियों को अप्रार्थी की ओर से वेरीफाई भी नहीं किया गया है । जो अन्य नियुक्तियाँ दी गई हैं वह अप्रार्थी तथा भारतीय खाद्य निगम वर्कर यूनियन के मध्य हुए समझौता दिनांक 12-4-1991 के अनुसार ही दी गई हैं । यदि प्रार्थी को इस समझौते से कोई ग्रीवेन्स रही है तो वह अपनी यूनियन के माध्यम से रिप्रजेन्ट कर सकता है । अप्रार्थी द्वारा प्रार्थी को कोई भुगतान नहीं किया गया है । ठेकेदारी प्रथा के अनुसार ही वेतन का भुगतान किया जाता था । भारतीय खाद्य निगम द्वारा प्रार्थी अथवा अन्य व्यक्ति को डायरेक्ट वेतन नहीं दिया जाता था । ई.पी. एफ संबंधित ठेकेदार ही काटा करता था तथा सीधे ही ई.पी.एफ. विभाग में जमा करवाता था। अप्रार्थी विभाग ई. पी. एफ नहीं काटता था । उक्त आधारों पर अप्रार्थी ने प्रार्थी के माँग-पत्र को निरस्त करने की प्रार्थना की ।

14. पूर्व में प्रार्थी श्री छोटु खान ने अपना शपथ-पत्र प्रस्तुत किया था । प्रार्थी से प्रतिपरीक्षा की गई । अप्रार्थी की ओर से श्री रेवालाल का शपथ-पत्र प्रस्तुत किया गया । श्री रेवालाल से प्रतिपरीक्षा की गई । इसके पश्चात् इस न्यायालय ने अधिनिर्णय दिनांक 16-7-2002 पारित किया था । इस सम्बन्ध में प्रार्थी ने माननीय राजस्थान उच्च न्यायालय के समक्ष रिट याचिका संख्या 1858 सन् 2003 को प्रस्तुत की थी । माननीय राजस्थान उच्च न्यायालय ने आदेश दिनांक 9-3-2009 के द्वारा प्रार्थी की ओर से प्रस्तुत रिट याचिका को स्वीकार किया तथा इस न्यायालय द्वारा पारित अधिनिर्णय दिनांक 16-7-2002 को अपास्त करते हुए मामले को पुन: विधिनुसार निर्णिय करने हेतु इस न्यायालय को प्रतिप्रेषित किया ।

15. माननीय उच्च न्यायालय द्वारा यह प्रकरण इस न्यायलय को प्रतिप्रेषित करने के पश्चात् श्रीमति रसीदा, श्री सऊखान, श्री रामुराम, श्री गफूर खान, श्री नीसार खान, श्री रामजान खान पुत्र ईसाक जी, श्री रमजान खान पुत्र सोमर खान, श्री हनीफ खान, श्री हकीम खान, श्री बरकत खान, श्रीमति कमला देवी, श्री अनवर लोगा, श्री इब्राहीम, श्री जुम्मा, श्री तेजसिंह, श्री वली मोहम्मद, श्री कालूखान, श्री जलालूखान, श्री नेमीचन्द, श्री बसीर खान, श्री पूनाराम, श्री रमेश, श्री इल्लयात, श्री धानी खान, श्रीमति पनकी, श्री अल्लानुर, श्री इकबाल खान, श्री मेहरदीन, श्री मुशेखाँ के शपथ-पत्र प्रस्तुत किये गये । इनमें से केवल सऊखान, गफूर खान, रमजान खान पुत्र ईसाक तथा मुशेखाँ को प्रतिपरीक्षा हेतु प्रस्तुत किया गया । इनसे प्रतिपरीक्षा की गई । अप्रार्थी की ओर से रेवालाल तथा श्री भानूप्रकाश उपाध्याय के शपथ-पत्र प्रस्तुत किये गये । इनसे प्रतिपरीक्षा की गई । अप्राथी की ओर से प्रलेखीय साक्ष्य में समझौता प्रदर्श ए-1 नोटिफिकेशन प्रदर्श ए-2, पत्र प्रदर्श ए-3, पत्र प्रदर्श ए-4, सर्कूलर प्रदर्श ए-5, रिट याचिका की प्रमाणित प्रति प्रदर्श ए-6, ऑब्जर्वेशन प्रदर्श ए-7 तथा भविष्य निधि घोषणा और उत्तराधिकारी नामांकन-पत्र प्रदर्श ए-8 को पेश कर प्रदर्श करवाये गये ।

16. बहस उभय-पक्ष सुनी गई । पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है ।

17. पूर्व में इस न्यायालय द्वारा इस प्रकारण में दिनांक 16-7-2002 को अधिनिर्णय पारित किया गया था तथा इसके द्वारा प्रार्थी श्री छोटु खान तथा अन्य 114 कर्मकारों की विपक्षी नियोजक से नियमितिकरण की माँग को अनुचित तथा अवैध घोषित किया गया था इस अधिनिर्णय के विरूद्ध प्रार्थीगण ने माननीय राजस्थान उच्च न्यायालय के समक्ष एक एस.बी. सिविल रिट पिटीशन संख्या 1858 सन् 2003 प्रस्तुत की । माननीय राजस्थान उच्च न्यायालय द्वारा इसमें पारित आदेश दिनांक 9-3-2009 में यह निर्णित किया गया कि अप्रार्थी भारतीय खाद्य निगम तथा इसके द्वारा मान्यताप्राप्त भारतीय खाद्य निगम वर्कर यूनियन के मध्य निष्पादित समझौता दिनांक 12-4-1991 के अन्तर्गत माँग के सम्बन्ध में कोई दूसरी श्रमिक यूनियन भी विधिसम्मत रूप से विवाद प्रस्तुत कर सकती है। माननीय न्यायालय ने अपने निर्णय में यह निर्धारित किया है कि दूसरी यूनियन के सदस्य तथा प्रार्थीगण उक्त समझौते के अन्तर्गत लाभ प्राप्त कर सकते हैं। माननीय न्यायालय ने इस न्यायालय के अधिनिर्णय दिनांक 16-7-2002 के इस भाग को गलत बताया कि उक्त समझौते के अन्तर्गत लाभ नियमित कर्मचारियों को दिया गया तथा प्रार्थीगण ठेकेदार के कर्मचारी थे अत: वे उक्त समझौते के अन्तर्गत कोई लाभ प्राप्त करने के अधिकारी नहीं हैं । माननीय न्यायालय ने यह निर्धारित किया कि जिन श्रमिकों को उक्त समझौते के अन्तर्गत लाभ प्रदान किये गये थे, वे श्रमिक भी ठेकेदार द्वारा नियोजित श्रमिक ही थे।

18. उक्त निष्कर्षों के परिप्रेक्ष्य में माननीय न्यायालय ने अपने उक्त आदेश के द्वारा इस न्यायालय को यह निर्देश प्रदान किया कि यह न्यायालय प्रार्थीगण की माँग की इसकी मैरिट के आधार पर परीक्षा करे तथा यह निर्धारित करे कि अप्रार्थी खाद्य निगम के मैनेजमेन्ट ने उक्त समझौते के क्लॉज-3 का जो निर्वचन किया है वह विधिसम्मत है अथवा नहीं । माननीय न्यायालय ने यह भी निर्देश दिया कि यह न्यायालय इस बात पर भी विचार करे कि ठेकेदार की नियुक्ति अप्रार्थी नियोजक को वास्तव में कोन्ट्रेक्ट लेबर सप्लाई करने के लिए जिनाईन कोन्ट्रेक्ट के अन्तर्गत नियुक्त किया गया था अथवा ऐसा कोन्ट्रेक्ट श्रमिकों को लाभकारी कानून के लाभों से वंचित करने के लिए केवल ruse/camouflage के रूप में किया गया था ।

19. विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि प्रार्थीगण अप्रार्थी संस्थान तथा ठेकेदार के मध्य वैध संविदा के अन्तर्गत अप्रार्थी संस्थान को ठेकेदार द्वारा सप्लाई किये गये श्रमिक थे। यह संविदा वैध थी । यह संविदा ruse/camouflage नहीं थी । अप्रार्थीगण ने भी इसका प्रतिवाद नहीं किया है तथा यह नहीं कहा है कि जिस संविदा के अन्तर्गत ठेकेदार ने अप्रार्थी संस्थान को संविदा श्रमिक के रूप में प्रार्थीगण को सप्लाई किया, वह संविदा ruse/camouflage था । निष्कर्ष यह है कि उक्त संविदा ruse/camouflage प्रमाणित नहीं होता है । देखना यह है कि क्या इस आधार पर प्रार्थीगण संस्थान में नियमितिकरण के अधिकारी हो जाते हैं ।

20. विद्वान प्रतिनिधि प्रार्थीगण का यह तर्क है कि प्रार्थीगण तथा समझौता दिनांक 12-4-1991 के अन्तर्गत नियमित किये गये कर्मचारी दोनों ही ठेकेदार के माध्यम से अप्रार्थी संस्थान को दिये गये श्रमिक हैं । विद्वान प्रतिनिधि प्रार्थी का यह तर्क रहा है कि प्रार्थीगण उक्त समझौते के अन्तर्गत नियमित किये गये कोन्ट्रेक्ट लेबरर से वरिष्ठ थे तथा उक्त समझौते के अन्तर्गत प्रार्थीगण को सम्मिलित नहीं करना तथा उन्हें नियमित नहीं कर अप्रार्थी ने अवैधानिकता की है । विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि समझौता दिनांक 12-4-1991 प्रदर्श ए-1 का निर्वचन अप्रार्थी ने गलत किया है । अप्रार्थी ने इसके अन्तर्गत अप्रार्थी संस्थान में दिनांक 24-7-1991 को कार्य कर रहे श्रमिकों तथा सन् 1986 से 1990 तक कार्यरत श्रमिकों की ही वरिष्ठता सूची बनाई है तथा उसी वरिष्ठता सूची में से श्रमिकों को अप्रार्थी संस्थान में स्थायी/नियमित किया गया है । विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि अप्रार्थी संस्थान ने ऐसा स्वेच्छाचारी (Arbitrary) रूप से किया है जो अवैधानिक है । विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि प्रार्थीगण इन दोनों वरिष्ठता सूचियों में वर्णित कर्मचारियों से वरिष्ठ हैं तथा उन्हें भी इन वरिष्ठता सूचियों में सम्मिलित करना चाहिये था तथा उन्हें प्राथमिकता के आधार पर अप्रार्थी संस्थान में स्थायी/नियमित किया जाना चाहिये था विद्वान प्रतिनिधि प्रार्थी ने अपने इस तर्क की पुष्टि में एक विधिक दृष्टांत Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karamchari Sanghatana (2009) 8 SCC Page 556 में पारित विधिक दृष्टांत प्रस्तुत किया है ।

21. उक्त तर्कों के विपरीत विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि कोन्ट्रेक्ट लेबर सिस्टम (रेग्युलेशन एण्ड एबोलीशन) एक्ट, 1970 की धारा 10 के अन्तर्गत जारी नोटिफिकेशन दिनांक 1-11-1990 के द्वारा कोन्ट्रेक्ट लेबर सिस्टम को समाप्त कर दिया गया था। विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि इस नोटिफिकेशन के अन्तर्गत अप्रार्थी संस्थान किसी संविदा श्रमिक को अपने यहां नियमित नियुक्ति देने के लिए बाध्य नहीं है, लेकिन इसके उपरान्त भी अप्रार्थी संस्थान ने अपने 99 डिपो में विभिन्न रिक्तियों को भरने के लिए ऐसे संविदा श्रमिकों को प्राथमिकता देने के उद्देश्य से दिनांक 22-1-1991 तथा 11-6-1991 को सर्कूलर प्रदर्श ए-3 तथा प्रदर्श ए-5 जारी किये थे। विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि इसी के साथ दिनाँक 12-4-1991 को अप्रार्थी संस्थान तथा अप्रार्थी संस्थान के द्वारा मान्यताप्राप्त यूनियन में एक समझौता हुआ तथा इस समझौते के अन्तर्गत उस मान्यता प्राप्त यूनियन ने अप्रार्थी संस्थान को दो सूचियाँ दी तथा उन सूचियों में से अप्रार्थी संस्थान ने अपने यहां रिक्तियों के आधार पर संविदा श्रमिकों को नियुक्तियाँ प्रदान की। विद्वान प्रतिनिधि अप्रार्थी का यह मानना है कि प्रार्थीगण समझौते की दिनांक का अप्रार्थी संस्थान में कार्य नहीं करते थे तथा उनको अप्रार्थी संस्थान के ठेकेदार ने बहुत पहले ही सेवा से पृथक कर दिया था। अप्रार्थी संस्थान तथा उन श्रमिकों के मध्य नियोजक तथा कर्मकार का कोई सम्बन्ध नहीं था। विद्वान प्रतिनिधि अप्रार्थी का यह मानना है कि किसी भी कार्य को करने के लिए एक निश्चित प्रक्रिया अपनानी पड़ती है तथा कुछ मानदण्ड तय करने होते हैं। विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि अप्रार्थी संस्थान तथा अप्रार्थी संस्थान द्वारा मान्यताप्राप्त यूनियन ने संविदा श्रमिकों को अप्रार्थी संस्थान के यहां एब्जोर्ब करने के लिए एक निश्चित मानदण्ड बनाया तथा एक प्रक्रिया निश्चित कर उसके अनुरूप उन श्रमिकों को अप्रार्थी संस्थान में रिक्तियों के आधार पर सेवा में नियमितिकरण किया गया।

22. विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि प्रार्थीगण में से कई ऐसे श्रमिक हैं जो कि सन् 1986 के पूर्व कई वर्षों पहले कार्य छोड़कर चले गये थे अथवा उन्हें संबंधित ठेकेदार ने सेवा से पृथक कर दिया था। प्रार्थीगण में से कई श्रमिक अप्रार्थी संस्थान में कार्य करने के लिए शारीरिक रूप से सक्षम नहीं थे और उनकी आयु भी बहुत ज्यादा हो चुकी थी। विद्वान प्रतिनिधि अप्रार्थी का यह तर्क है कि प्रार्थीगण अप्रार्थी संस्थान में कार्य करने के लिए उपयुक्त नहीं थे। इन आधारों पर विद्वान प्रतिनिधि अप्रार्थी का यह मानना है कि प्रार्थीगण अप्रार्थी संस्थान में नियमितिकरण के अधिकारी नहीं हैं। विद्वान प्रतिनिधि अप्रार्थी ने अपने इन तर्कों की पुष्टि में निम्न विधिक दृष्टांत प्रस्तुत किये:-

1. Secretary, State of Karnataka Vs. Umadevi and others 2006 SCCL.Com page 243 माननीय न्यायलय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है:-

" Constitution of India, 1950-Articles 14, 16, 39(a), 226 and 309-Regularization of service-temporary emoloyees or those working on daily or contractual basis have no enforceable legal right to be permanently absorbed into service-public employment has to be made in accordance with Acts, Rules or Regulations enacted for that purpose. (b) irregular appointment-regulatization of service-question of regularization of service of irregular appointees have to be considered in light of constitutional scheme."

2. Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others AIR 2001 Supreme Court page 3527 माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किये हैं:—

"(H) Contract Labour (Regulations and Abolition) Act (37 of 1970) S.10—Prohibition of contract labour-Automatic absorption of Contract Labour by principal employer-Not contemplated by Act-Contract labour however to be given preference in employment by principal employer."

"(I) Contract Labour (Regulations and Abolition) Act (37 of 1970), Ss. 2 (i), 2(c)—Industrial Disputes Act (14 of 1947), S.2(s)-Contract labour-Engagement by contractor-Does not create relationship of master and servant between contractor labour and principal employer."

3. माननीय उच्च नयायालय ने अपने उक्त निर्णय दिनांक 9-3-2009 में भी उक्त विधिक दृष्टांतों के पैरा संख्या 122(5) तथा 122(6) को उद्धृत किया है:—

"(5) On issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any supply of contract labour for work of the establishment under a genuine

contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere comouflage, the so-called contract of the Principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under S.10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workman he shall give preference to the erstwhile contract labour, if otherwiese found suitable and if necessry, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also are axing the conditions as to academic qualifications other than technical qualifications."

23. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य में परिप्रेक्ष्य में विचार किया तथा उक्त विधिक दृष्टांतों का भी अध्ययन किया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्नप्रकार है।

24. संविदा श्रमिक प्रणाली को कोन्ट्रेक्ट लेबर (रेग्युलेशन एण्ड एबोलिशन) एक्ट 1970 की धारा 10 के अर्न्तगत जारी नोटिफिकेशन दिनांक 1-11-1990 के द्वारा समाप्त कर दिया गया था। हमारी यह राय है कि इस नोटिफिकेशन के अन्तर्गत किसी भी औद्योगिक संस्थान पर यह बाध्यता नहीं है कि वह अपने यहां कार्य कर रहे अथवा पूर्व में जिन संविदा श्रमिकों ने उनके यहां कभी भी कार्य किया है उन सभी श्रमिकों को अपने संस्थान में एब्जोर्ब करे। विभिन्न न्यायालयों द्वारा पारित विधिक दृष्टांतों में यद्यपि यह अपेक्षा की गई है कि संविदा श्रमिक प्रणाली के समाप्त होने पर ऐसे संविदा श्रमिकों को सेवा में लेने के लिए प्राथमिकता दी जावे। अप्रार्थी संस्थान ने भी ऐसे श्रमिकों को अपने यहां सेवा में स्थायीकरण करने के लिए पत्र प्रदर्शए-3 तथा सर्कूलर प्रदर्शए-5 जारी किये थे तथा दिनांक 12-4-1991 को अप्रार्थी संस्थान ने अपने यहां मान्यता प्राप्त श्रमिक यूनियन से समझौता किया था।

25. हमारी यह राय है कि अप्रार्थी संस्थान से यह अपेक्षा नहीं की जा सकती है कि वह कभी भी उनके यहां संविदा श्रमिक के रूप में कार्य करने वाले सभी श्रमिकों को अपने यहां एब्जोर्ब कर उनका सेवा में नियमितिकरण करे। अप्रार्थी संस्थान को इसके लिए एक प्रक्रिया निर्धारित करनी थी तथा अपने यहाँ लम्बित रिक्तियों के अनुसार ही उपयुक्त संविदा श्रमिकों को स्थायी अथवा नियमित करना था। अप्रार्थी संस्थान ने इसके लिए प्रक्रिया बनाई। इस प्रक्रिया का उल्लेख उक्त समझौता प्रदर्शए-1 दिनांक 12-4-1991 के क्लोज नम्बर-3 में किया गया है। इसके तहत अप्रार्थी संस्थान में कुल श्रमिकों की संख्या निर्धारित करने के बाद रिक्तियों के आधार पर संविदा श्रमिकों को नियुक्तियां दी गई। इस समझौते के क्लॉज-3 (सी) में यह उल्लेख किया गया है कि ऐसे श्रमिकों की शारीरिक स्वस्थता(Phycisal fitness) तथा आयु का निर्धारण किया जायेगा। माननीय न्यायालय ने Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others AIR 2001 Supreme Court Page 3527 में भी यह निर्धारित किया है कि ऐसे श्रमिकों की आयु आदि पर विचार किया जाना चाहिये। उनकी ऐकेडेमिक क्वालिफिकेशन तथा टैक्नीकल क्वालिफिकेशन पर भी विचार किया जाना चाहिये। इन सभी तथ्यों को ध्यान में रखते हुए अप्रार्थी संस्थान तथा अप्रार्थी संस्थान से मान्यता प्राप्त यूनियन ने अप्रार्थी संस्थान में संविदा ठेकेदार के माध्यम से कार्यरत् संविदा श्रमिकों की दो वरिष्ठता सूचियां बनाई। पहली वरिष्ठता सूची में दिनांक 24-7-1991 से कार्य कर रहे श्रमिकों के नामों का उल्लेख है तथा दूसरी वरिष्ठता सूची में 1986 से 1990 तक कार्यरत श्रमिकों को सम्मिलित किया गया है। हमने ऊपर उल्लेख किया है कि यह सम्भव नहीं है कि अप्रार्थी संस्थान में कितने ही वर्ष पूर्व संविदा श्रमिक के रूप में कार्य करने वाले सभी श्रमिकों को भी इस तरह सेवा में लिया जावे। इसके लिए एक युक्तियुक्त फारमूला तय करना पड़ेगा और जिन श्रमिकों की आयु तथा स्वास्थ्य उपयुक्त होगा उन्हीं श्रमिकों को सेवा में लिया जा सकता है। हमारी यह राय है कि अप्रार्थी संस्थान ने उक्त दोनों वरिष्ठता सूचियाँ बनाकर एक युक्तियुक्त वर्गीकरण (Reasonabe classification) किया है। हमारी राय में अप्रार्थीगण को भी इसके लिये एक सीमा रेखा खींचनी थी तथा उन्होंने ऐसा करते हुए दिनांक 24-7-1991 को कार्यरत तथा सन् 1986 से सन् 1990 की अवधि में कार्यरत् श्रमिकों की दो वरीयता सूचियां बनाई। हमारी राय में यह विधि सम्मत् है।

26. उक्त विवेचन के आधार पर हमारी राय में यद्यपि ठेकेदार द्वारा अप्रार्थी संस्थान को प्रार्थी श्रमिकों को सप्लाई करने के सम्बन्ध में उक्त ठेकेदार तथा अप्रार्थी संस्थान के मध्य किया गया संविदा ruse/camouflage नहीं है, लेकिन हमारी यह भी राय है कि अप्रार्थी संस्थान ने समझौता प्रदर्शए-1 दिनांक 12-4-1991 के क्लॉज-3 का निर्वचन वैधानिक रूप से किया है तथा अप्रार्थी संस्थान ने एक युक्तियुक्त वर्गीकरण (reasonable classification) कर संविदा श्रमिकों को अपने यहां एब्जोर्ब किया है। प्रार्थीगण अप्रार्थी संस्थान द्वारा युक्तियुक्त वर्गीकरण के आधार पर बनाई गई वरिष्ठता सूची के अर्न्तगत नही आते थे। प्रार्थीगण ने अप्रार्थी संस्थान में उक्त सैटलमेन्ट प्रदर्शए-1 की दिनांक 12-4-1991 के कई वर्षों पूर्व अप्रार्थी संस्थान में कार्य किया है। इनमें से कई व्यक्ति उस तिथि तक अर्द्धवार्षिकी आयु पूरी कर चुके थे तथा वे अप्रार्थी संस्थान में कार्य की प्रकृति को देखते हुए शारीरिक रूप से तथा उम्र के आधार पर कार्य करने के लिए उपयुक्त नहीं थे। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में अप्रार्थी संस्थान में प्रार्थी तथा अन्य 114 कर्मकारों की सेवा में नियमितिकरण की मांग उचित तथा वैध नहीं है। अत: प्रार्थीगण कोई अनुतोष प्राप्त करने के लिए अधिकारी नहीं है।

आदेश

27. अत: यह अधिनिर्णित किया जाता है कि :-

(1) प्रार्थी छोटु खान तथा अन्य 114 कर्मकारों को अप्रार्थी संस्थान से सेवा में नियमितिकरण की मांग उचित तथा वैध नहीं है।

(2) प्रार्थीगण कोई अनुतोष प्राप्त करने के अधिकारी नहीं है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 41/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2012 को प्राप्त हुआ था ।

[सं. एल-12011/280/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.41/2004) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 6-8-2012.

[No. L-12011/280/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

Present: Sri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 41 of 2004

Parties: Employer in relation to the management of Central Bank of India and their workman.

Appearances:

On behalf of the workman : Mr. B. Prasad, Rep. of the workman

On behalf of the Management : Mr. A.K. Sinha/Mr. S. S. Mishra Rep. of the Management

State : Bihar Industry: Banking

Dated, Dhanbad, the 29th June, 02

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal vide their Order No. L-12011/280/03-IR (B-II) dt. 11-3-2004.

SCHEDULE

"Whether the action of the management of Central Bank of India, Zonal Office, Patna in terminating the services of Shri Laljee Prasad and denying regularisation of his service as a Peon is legal and justified? If not what relief Shri Laljee Prasad is entitled to ?"

2. The case of the sponsoring union is that workman Laljee Prasad was orally appointed by the Management of Central Bank of India to discharge all the duties of a Peon at Muradpur Branch, Patna since 1992. He performed the duties from 10.A.M. to 06 P.M. as under taking out of and putting Ledger in the Almirah, carrying scroll, token book from Cash Deptt. to Accounts Deptt, posting of mails, serving water, tee to the staff, any other sunday job on the discretion of his superior at the daily wages Rs. 15 initially later on raised to Rs. 30, Rs.40 and Rs. 50 . He represented to the Management for regularisation of his service as a Peon. When the sponsoring union raised an Industrial Dispute as per its letter dt. 9-10-2002 in course of response to the notices before the Competent Authority for conciliation, the Management illegal terminated his service w.e.f. 26-10-2002 which was reported to the Conciliation Officer. But the failure of conciliation due to adamant attitude of the Management resulted in reference for adjudication. The workman belongs to Schedule Caste Category, having all the qualifications of a Peon.

Further case of the Union is that the workman while working with the Management for over a decade was overaged. He was not paid wages par with his counterpart performing similar nature of duties. The action of the Management in terminating his service and denying his regularisation being violation of the mandatory provision u/s 25 F and Sec. 33,39 of the I.D. Act, 1947, andArt. 39 (d) of the Indian Constitution is unjustifed and illegal. He is entitled to reinstatement and regularisation of his service as a Peon with due wages for the period of his working as well as Bonus as per Bonus Act 1965.

3. Besides it, the case of the sponsoring union with specific denials irrespective of repetitions is that the Management most arbitrarily acted like a private employer in terminating the services of the workman employing unfair Labour Practice but his regularisation was unconsidered even as per its own scheme occasionally formulated for regularisation of daily rated/ temporary workman. Rather the Management as a state deprived him of his benefits: Provident Fund, Gratuity, Uniform leave etc. uncaring for its own certain obligations towards the workman under existant master servant relationship. The reference of the I.D. was rightly and legally for adjudication.

4. Whereas challenging its maintainability the categorical denialful case of the Management is that the Central Bank of India as a State under Article 12 of the Indian Constitution owns the recognised procedure for

recruitment of sub-staff. The Bank has to call for the names of eligible candidates from the Local Employment Exchange, and after interviewing all of them it has to select comptent persons out of them. None is authorised in the Bank to engage any person in detere the rules prescribed for recruitment by the Bank. The Management categorically stated in the I.D. raised by the Union that workman Laljee Prasad was never appointed by the Bank to discharge the duties of a Peon from Oct., 1992, as the Union itself stated about him to have been orally appointed as a Peon so the question of regularising him in the Bank does not arise. Since he never worked as a Peon in the Bank, likewise the question of his working accordingly for 240 days in a calender year unarises. The claim of the workman is neither legal nor justified. The union raised it to induct an outsider in the Bank services through litigation. Moreover, a person illegally appointed has got no right to regularisation in the services of Pub. Sector Undertak ng. Neither the demand of the Union is as per settled principle of Law nor employer-employee relationship exists between the Management and the dispute Laljee Prasad.

FINDING WITH REASONING

5. In this case, WWI Laljee Prasad, the workman for Union has been examined and cross examined. Mr. S.S. Mishra,the Manager (HRD) for the management declines to examine a witness for the management, so the evidence of the Management was closed as per order dt. 11-3-11 of the Tribunal, Camp Court at Patna.

6. The statement of WWI of Laljee Prasad, the workman is that he had worked and performed all the duties of a permanent peon such as carrying Bank Challan and service vouchers (Extt. W.1 & W.1/1) and as per authority letters (Extt. W.2 & W.2/1) and his going to Rajendra Nagar, Stationary office on the order of the Branch Manager from 8.00 A.M. to 5.30 P.M. daily except Sunday from October, 1992 to 26th October, 2002 at daily wages Rs. 15 later on enhanced to Rs. 30 and Rs. 50 which was weekly paid to him through the vouchers (Photo copies thereof Ext. 3 series at Murudapur Central Bank of India Branch, through these letters (first three) and (last one) under the signatures of Mr. C.N. P. Sinha, the Regional Manager, and Mr. S.C. Pandey the Branch Manager (Extt. W.4) series and Ext. W.5 respectively) were also written for his absorption and appointment respectively, for which the industrial dispute was raised by his SC &ST Organisation before the ALC(C), but on the receipt of its notice, he was terminated without any notice or retrenchment compensation. His claim is for rainstatement/regularisation in service as a permanent peon. The workman in his cross-examination has admitted that he was temporarily working on the daily wages payable weekly without his appointment, irrespective of his knowledge of the procedure for the appointment.

7. Mr. B. Prasad, the Union Representative for the workman argues that he was working as a casual working from 1994 discharging all the duties of a Peon and sweeper in absence of a permanent sweeper as also against a shortfall of two Peons, as reported by the Branch Manager. In support of his argument, Mr. Prasad has cited the following rulings:

> 2010 (I) SCR 591, Harjinder Singh Vs. Punjab State Ware Corp. related to appellant (workman) who was employed in the Corporation as workcharge Motoer Mate w.e.f. 5-3-1986 was appointed as Work Munsi in specific scale for three months, then again his tenure for three months as per second order ending on 4-5-1987 yet he continued in service till 5-7-1988, the date of issuance of one month's notice by the Managing Director to terminate his service, and
>
> 2012-I-LLJ. 23 (Mad) 23 (SB), Management of Best & Cronyiten Engineering Ltd. Chennai Vs. A.M. Sakar & another, which refers to a case on which Petitioner Management incurred huge financial loss; and had to retrench some of its employees, but ten of employees persisted in seeking redress through adjudication. The Labour Court held them entitled to reinstatement with back wages and continuity in service. Hon'ble H.C. Madras, held 'Termination of service of employees who were workman under Sec. 2(5) of Industrial Dispute Act., 1947 would not be valid if condition precedent under Sec. 25, N (1) of the Act was complied with.

8. In view of both the aforesaid Authorities, the condition precedent to retrenchment of workman under Sec. 25 N(1) presupposes; Whether the workman in the case has been in continuous service for not less than one year under the employer as also under Sec. F as in the terms of " continuous service" defind under Sec. 25B of the Industrial Dispute Act, 1947 under its clause (a) for a period one year, if the workman during a period of twelve calender months preceeding the date with reference to which calculation is to be made has actually worked under the employer for not less than.

(ii) two hundred and forty days in any other case."

The perusal of the entire Act manifests that Sections F and lie under its Chapters V-A and VB with the Headings : lay off and "Retrenchment" and "Special provision Relating to lay off Retrenchment and closure in certain Establishment" respectively.

Section 2(KKK) of the said I.D. Act defines the term "lay Off" means "the failure, refusal or inability of an employer on account of shortage of coal power or raw materials or the accumulation of stocks or the break down of machinery or natural clamaity or any other connected reason to given employment to a workman whose name is borne in the muster rolls of his industrial establishment...."

The present case does not fulfill any of aforesaid criteria for the alleged retrenchment of the workman. Since

the I.D. Act carries nowhere any specific provision for other retrenchment of a workman than under the aforesaid two chapters. So the "retrenchment" as defined u/s 2(oo) of the Act, as also literally, means termination by an employer of service of workman for any reason whatsoever in broader aspect.

9. On examination of all documentary proof of workman, I find the following facts:

(i) Out of two inter Branch Claim advice-cum-vouchers for cash Remittance dt. 6th June and 3rd Jan. 2001 (Extt. W & W/1) respectively,only the latter Cash remittance proves it was sent through one G.S. Singh and workman Laljee Prasad on 3-1-2001, for which two workman was paid conveyance charge @ Rs. 20 to Rs. 40 (Ext. W3/3-1),

(ii) Out of three letters of the Central Bank dt. 4/10th Oct. 2001, 17th Jan. 2002 and 12th Nov., 2001 (Extt. 2 series) respectively, the workman was sent to bring old vouchers etc. from its Branch Rajender Nagar.

(iii) The workman has though orally claimed to have worked from October, 1992 to 26th October, 02 yet documentally proved his photo copies of his intermittently paid vouchers as Extt. 3 series (total-127 sheets only) for the period of Oct. 2000 to July, 2001. The debit vouchers reveal the payment of mostly conveyance charges @ Rs. 10 to 30 daily to his for purely casual worker in addition to his casual laboure charge for two to three days casual work at the rate of Rs. 40 . At times, he was paid sweeping charge at rate of Rs. 25 for two days.

(iv) The debit vouchers also include the payment of amounts through the workman for Flag Hoisting, Registry on its advance therefor, and Collie (vide Extt. W.3 3/2, 3/13, 3/28 etc. respectivelly which were never any wage of the workman.

(v) The entire aforesaid debit vouchers of the Bank Management do not prove any continuous working of the workman in any of the calender year 2000 or 2001 as his working of conveyance comes 6, 21 and 23 days total 50 days in the month of October to December, 2000 except his labour charge for late work and water (Extt. W 3/7 and 3/25 respectively) one day in each of the two later months. Likewise, the casually working of the workman totals 153 days out of which Actual working one 132 days comes for the period of Jan. to July, 2001. Not 240 days in any of the said two years or in 12 (twelve) calender months preceding his non engagement since October, 2002.

(vi) The Central Bank, Muradpur Branch's letter dt. 30-7-2001 to the Regional Office, Patna (Ext. W.5 photocopy) in reference Muradpur 27/2001-2002/107 but not in reference to the Bank's Regional Office's three letters of 1999 (Extt. 4 series) refers to the Branch's letter dt. 25-9-95 about the workman to have completed 246 days with an earnest request for permission to work as a temporary peon in place of an employee in casual leave is not admissible nor it would serve as base for his claim, as he has failed to prove his continuous actual service/work for 240 days during a period of twelve calender months preceding his non employment. So none of the aforesaid two Authorities in view of the factum of the case holds good with it nor the word 'termination' applies to the present status of the workman like a piece rated worker purely.

10. Considering the entire aforesaid facts it is responsed to the shedule, and accordingly held that no question of the action of the Management of Central Bank of India, Zonal Office Patna in terminating the services of Sri Laljee Prasad and denying regularisation of his service as a peon as legal or justified arises, as he was not an employee of the Bank rather he was purely a casual worker like a piece rated one. Therefor, he is not entitled to any relief whatsoever.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जोधपुर के पंचाट (संदर्भ संख्या 5/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था ।

[सं. एल-12012/36/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2884.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.5/2010) of the Industrial Tribunal/Labour Court, Jodhpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 7-8-2012.

[No. L-12012/36/2009-IR (B-II)]

SHEESH RAM, Section Officer

अनुबन्ध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारीः- श्री एच.आर. नागौरी, आर. एच.जे.एस.

औद्योगिक विवाद् (केन्द्रीय) संख्याः- 5 सन् 2010

श्री मानाराम पुत्र श्री गोरधनराम, निवासी गोलिया विड़ा तहसील पचपदरा, जिला बाडमेर (राजस्थान) ।

.....**प्रार्थी**

बनाम

1. दी डिप्टी जनरल मैनेजर, इलाहबाद, बैंक, जोनल ऑफिस, जयपुर ।

2. दी ब्रांच मैनेजर, इलाहबाद बैंक, बालोतरा ।

.....अप्रार्थीगण

उपस्थिति:-

(1) प्रार्थी के प्रतिनिधि-श्री के.डी. तिवाड़ी उपस्थित ।

(2) अप्रार्थीगण के विरुद्ध कार्यवाही इकतरफा ।

अधिनिर्णय

दिनांक:- 22-12-2011

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल. 12012/36/2009-आई.आर. (बी-II) नई दिल्ली दिनांक 18-8-2009 के द्वारा निम्न विवाद् अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है :-

"Whether the action of the management of Allahbad Bank in terminating the services of Shri Mana Ram S/o Gordhan Ram w.e.f. 14-5-2008 is legal and justified? What relied the concerned workman is entitled and from which date?"

2. प्रार्थी ने अपने माँग-पत्र में यह उल्लेख किया है कि इलाहबाद बैंक की बालोतरा शाखा खोले जाने पर लिपिक का कार्य करने हेतु स्टाफ की आवश्यकात होने पर अप्रार्थी द्वारा प्रार्थना-पत्र मॉगे गये । प्रार्थी ने उल्लेख किया है कि उसने भी अपना प्रार्थना पत्र प्रस्तुत किया । प्रार्थी ने उल्लेख किया है कि शाखा ने दिनांक 25-3-2006 से कार्य प्रारम्भ कर दिया । प्रार्थी को दिनांक 4-4-2006 को शाखा में लिखित कार्य करने हेतु नियुक्त किया तथा प्रार्थी ने उसी दिन कार्यभार ग्रहण कर लिया । प्रार्थी ने उल्लेख किया है कि एक अन्य आदेश के द्वारा प्रार्थी का वेतन 50 रुपये प्रतिदिन निर्धारित करते हुए समय-समय पर वेतन में बढोतरी करने का उल्लेख किया गया और प्रार्थी का अंतिम वेतन 100 रुपये निर्धारित किया गया ।

3. प्रार्थी ने आगे उल्लेख किया है कि उसने दिनांक 4-4-2006 से 13-5-2008 तक निरन्तर शाखा का सम्पूर्ण कार्य किया । उसने इस अवधि में डाक रजिस्टर, वाउचर वाउचर-रजिस्टर-केश-बुक, किल्यरिंग मीमो शेडयूल, किल्यरिंग के टी.आर. सफेद वाउचर,किल्यरिंग के पीले वाउचर, किल्यरिंग मेमो रिटर्न, बैंक के डी.डी. तथा बैंकर्स चैक रजिस्टर, एस.बी. तथा करेन्ट एकाउन्ट की चैक बुकों के रजिस्टर, पास-बुकों के रजिस्टर, पास-बुकों, बैंक लोग-बुक व डे-बुक सी.बी. सी. रजिस्टर में इन्द्राज अपने हाथ से किये हैं तथा किल्यरिंग का सारा कार्य उसके द्वारा सम्पादित किया गया । प्रार्थी ने उल्लेख किया है कि इस अवधि में उपस्थिति रजिस्टर में प्रार्थी का नाम अंकित है ।

4. प्रार्थी ने आगे उल्लेख किया है कि उसने समझौता वार्ता में आवेदन प्रस्तुत कर उक्त दस्तावेज अप्रार्थी से प्रस्तुत कराने का निवेदन किया, लेकिन अप्रार्थी ने उन्हें प्रस्तुत करने से इन्कार कर दिया तथा अप्रार्थी ने प्रार्थी के विवाद के उत्तर में प्रार्थी को कभी भी नियुक्त नहीं करने का उल्लेख किया । प्रार्थी ने उल्लेख किया है कि प्रार्थी प्रार्थी को दफ्तरी के पद पर नियुक्त होना दर्शाया गया है जबकि उसने उक्त अवधि में लिपिक का काम किया है । प्रार्थी ने उल्लेख किया है कि उक्त अवधि में शाखा में कोई लिपिक नियुक्त नहीं था । प्रार्थी के अतिरिक्त शाखा प्रबन्धक तथा एक अधिकारी शाखा में कार्यरत थे । प्रार्थी ने उल्लेख किया है कि दिनांक 14-5-2008 को शाखा प्रबन्धक ने मौखिक आदेश से प्रार्थी को सेवा से पृथक कर दिया । प्रार्थी ने यह उल्लेख किया है कि उसे दिनांक 12-4-2008 के वेतन का भुगतान किया गया शेष अवधि का वेतन अभी तक देय है ।

5. प्रार्थी ने उल्लेख किया है कि उसने सेवापृथकता के पूर्व के एक वर्ष के 240 दिनों से अधिक दिनों तक कार्य कर लिया था, लेकिन अप्रार्थी द्वारा उसे सेवापृथक करने के पूर्व न तो एक माह का नोटिस दिया गया न ही नोटिस के एवज में नोटिस वेतन तथा छंटनी मुआवजा दिया गया । यह भी उल्लेख किया है कि प्रार्थी की सेवापृथकता के पश्चात् नये कर्मचारी को नियुक्ति दी गई, लेकिन प्रार्थी को ऑफर नहीं दी गई । इस प्रकार प्रार्थी की सेवापृथकता औद्योगिक विवाद अधिनियम की धारा 25-एफ. एच. एवं नियम 77 व 78 तथा संविधान के अनुच्छेद 14 तथा 16 के प्रतिकूल होने के निष्प्रभावी है । उक्त आधारों पर प्रार्थी ने प्रार्थना की है कि उसे सेवा की निरन्तरता में देय वेतन तथा परिलाभों के साथ सेवा में पुनर्स्थापित किये जाने का आदेश पारित किया जावे । प्रार्थी ने देय वेतन पर 18 प्रतिशत ब्याज भी दिलाये जाने की प्रार्थना की है ।

6. अप्रार्थी नियोजक की ओर से दिनांक 14-2-2011 को श्री दौलतराम बरथोरा प्रबन्धक उपस्थित हुए जिन्हें माँग-पत्र की नकल दी गई तथा पत्रावली वास्ते जवाब माँग-पत्र दिनांक 18-4-2011 को नियत की गई, लेकिन अप्रार्थीगण की ओर से दिनांक 18-4-2011 को स्वंय अप्रार्थीगण अथवा उनके प्रतिनिधि के उपस्थित नहीं होने से अप्रार्थीगण के विरुद्ध कार्यवाही इकतरफा का आदेश पारित किया गया ।

7. प्रार्थी ने एकपक्षीय साक्ष्य में अपने माँग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वंय का शपथ-पत्र प्रस्तुत किया ।

8. अप्रार्थी बैंक के विरुद्ध यह कार्यवाही एकपक्षीय चली है । अप्रार्थी बैंक के प्रबन्धक श्री दौलतराम बरथोरा केवल एक बार उपस्थित हुए तथा उसके बाद न तो वे उपस्थित हुए और न ही उनकी तरफ से कोई प्रतिनिधि उपस्थित हुआ । प्रार्थी ने अपने माँग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वंय का शपथ-पत्र प्रस्तुत किया है । अप्रार्थी की ओर से प्रार्थी से कोई प्रतिपरीक्षा नहीं की गई है । अप्रार्थी की ओर से कोई साक्ष्य भी प्रस्तुत नहीं की गई है । इन परिस्थितियों में हमारी यह राय है कि प्रार्थी के शपथ-पत्र में उल्लेख किये गये तथ्यों पर अविश्वास करने का कोई कारण नहीं है । हमारी राय में पत्रावली पर उपलब्ध प्रार्थी की साक्ष्य के आधार पर अखण्डित रूप से यह तथ्य प्रमाणित होता है कि अप्रार्थी बैंक ने प्रार्थी को दिनांक 4-4-2006 को अप्रार्थी बैंक की शाखा में लिपिकीय कार्य करने के लिए नियुक्त किया था तथा प्रार्थी ने अप्रार्थी बैंक की उक्त

शाखा में दिनांक 13-5-2008 तक निरन्तर कार्य किया है इन तथ्यों से यह तथ्य भी प्रमाणित होता है कि प्रार्थी ने उसकी सेवा समाप्ति के पूर्व के 12 केलेण्डर माहों में 240 दिनों से ज्यादा दिन अप्रार्थी के अधीन कार्य किया है । अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में औद्योगिक विवाद् अधिनियम की धारा 25-बी के प्रावधानों के अनुसार प्रार्थी की निरन्तर सेवा प्रमाणित होती है ।

9. पत्रावली पर ऐसा कोई साक्ष्य नहीं है कि अप्रार्थी ने प्रार्थी की सेवा समाप्त करने के पूर्व औद्योगिक विवाद् अधिनियम की धारा 25-एफ के प्रावधानों की पालना की । अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी की सेवा समाप्ति अनुचित तथा अवैध प्रमाणित होती है । अप्रार्थी के विरुद्ध कार्यवाही एकपक्षीय चली है । प्रार्थी ने अप्रार्थी बैंक में दिनांक 4-4-2006 से 13-5-2008 तक करीब 2 वर्ष से भी ज्यादा अवधि तक कार्य किया है । हमारी राय में प्रार्थी सेवा की निरन्तरता में सेवा में पुनर्स्थापित किये जाने योग्य है । प्रार्थी ने सेवा समाप्ति के पश्चात् अपना तथा अपने परिवार का भरण-पोषण किया होगा और ऐसी स्थिति में हमारी राय में प्रार्थी को उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित किये जाने तक की तिथि तक की अवधि का 25 प्रतिशत वेतन पूर्वभृति के रूप में दिलाया जाना समीचीन है ।

आदेश

10. अत: यह अधिनिर्णित किया जाता है कि :-

(1) अप्रार्थी नियोजक द्वारा प्रार्थी श्री मानाराम पुत्र श्री गोरधनराम को दिनांक 14-5-2008 से सेवाविथक करना उचित तथा वैद्य नहीं है ।

(2) अप्रार्थी नियोजक प्रार्थी श्री मानाराम पुत्र श्री गोरधनराम को तुरन्त सेवा में पुर्नस्थापित करे । प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित होने तक निरन्तर मानी जायेगी ।

(3) प्रार्थी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित होने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभृति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है ।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उन के कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/194/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2012 को प्राप्त हुआ था ।

[सं. एल-12011/33/2000-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/194/2000) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 6-8-2012.

[No. L-12011/33/2000-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/194/2000 Date:24-7-2012

Party No. 1 : The Zonal Manager,
Central Bank of India, Zonal Office,
Oriental Building, Kamptee Road,
Nagpur-440 001.

Versus

Party No. 2 : The General Secretary,
Central Bank Staff Union, Rashtriya,
Mill Mazdoor Sangh, Kamgar Bhavan,
Kamgar Chowk, Great Nag Road,
Nagpur.

AWARD

(Dated: 24th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Bank of India and their 28 workmen, as per enclosed list as annexure-'F', for adjudication, as per letter No. L- 12011/33/2000-IR (B-II) dated 21-6-2000, with the following schedule:—

"Whether the action of Central Bank of India through its Zonal Manager, Zonal Office, Nagpur in terminating/retrenching the services of Shri Vishnu Bajirao Samble & Other 27 (twenty seven) workmen as per list enclosed as Annexure-F after providing employment not more than 60 (Sixty) days in each calendar year during the years between 1987 and 1999 is legal, proper & justified? If not, to what relief the said workmen are entitled?"

"Whether the allegation made by the union that a large number of persons are engaged by the management on daily wage basis for short period of time one after the another, against the same vacancies

so as to ensure that the persons so engaged are not able to complete 240 days of service in a consecutive period of 12 calendar months instead of filling up the vacancies on regular basis is factually correct? If so, whether the action of management is legally justifiable? If not, justified, what relief/direction is necessary in the facts and circumstances of the case?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Central Bank Staff Union", ("the union" in short), filed the statement of claim on behalf of the 28 workmen, ("the workmen" in short) and the management of Central Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workmen as projected by the union in the statement of claim is that it is a registered trade union and the workmen are its members and party no. 1 is a nationalized bank and is an establishment and is covered by the provisions of Bombay Shops and Establishments Act, 1948 and by virtue of Section 38-B of the said Act, the Standing Orders are also applicable to party no. 1 and the workmen were working with party no. 1 for the last several years and they were being allowed to work only for 60 days in each year and were being terminated and in their places, new persons were appointed for the same work, which is available round the year and as work is available and the persons doing the work are terminated, the termination amounts to retrenchment as per the judgment of the Hon'ble Mumbai High Court and appointing the workmen only for 60 days, even though the work is/was of regular nature is an unfair labour practice and the party no. 1 was duty bound to recall the workmen and not to appoint outsiders and the outsiders were appointed to deny the claim of the workmen and the termination of the services of the workmen was prime facie illegal, improper and unjustified and was done only to avoid their regularisation and party no. 1 is adopting such practice, in view of the fact that a workman who completes 240 days of work in a period of 12 months becomes entitle for regularisation under the Standing Orders.

The further case as presented by the union is that the party no. 1 on 1-12-1993, issued a circular mentioning there in that, "no employee should be appointed on casual or temporary basis for a period beyond 60 days" and the said circulars indicates that management is aware of the fact that under the law, an employee who completes 60 days of work become a permanent employee and the engagement of the workmen was not due to temporary increase in work and the party no. 1 are in possession of the vouchers, attendance register and muster register in respect of the engagement of the workmen and payment of wages to them and the workmen were never given copies of the appointment orders, vouchers or termination order and production of the said documents by party no. 1 is necessary for the proper decision of the reference.

The union in the statement of claim has also mentioned the details of the working days alongwith the initial engagement of every workman separately. Prayer have been made by the union to answer the reference in its favour and to make payment of back wages to the workmen for the periods of their disengagement and to regularize the workmen as sub-staff from the date of their initial appointment and to grant them all consequential benefits.

3. The party no. 1 in their written statement has pleaded inter-alia that the claim made by the union is based on a wrong presumption that every daily wager, who works in the bank in the sub-staff cadre is entitled to permanency/ regularisation as a matter of right and as such, there is no merit in the reference and the union is not a majority union and as such has no right or locus-standi to agitate the grievances of the workmen and therefore, the reference is not maintainable. It is further pleaded by the party no. 1 that the working of the workmen as mentioned in page nos. 4, 5 and 6 of the statement of claim is a matter of record and it is false to say that the workman were terminated from services with a view to provide the work to new persons and the work which was provided to the workmen was always available and is available round the year. It is further pleaded by party no. 1 that the workmen are engaged by the Bank only for a temporary period, during the hours of need, depending upon the availability of work and when work is not available for them, they are discontinued and such discontinuance of the workmen does not and cannot be construed as termination by way of retrenchment and engagement of daily wager for 60 days does not amount to an unfair labour practice and every daily wager,who is engaged on purely temporary basis is an outsider for the bank and such daily wager has no legal right to claim permanency or regularisation,because he has put in particular days of services with the bank and casual or daily wagers are engaged by the bank, when the permanent staff members particularly the sub-staff of the bank go on leave, to get the work of cleaning of the bank premises and the toilets etc. done, for the particular day and the work of such daily wager comes to an end at the close of the office hours on that day itself and when work is provided to him on any other day, the same becomes a fresh assignment for that pay only and it is a settled position of law that such casual or daily rated employees have no vested right to claim permanency, even if they have worked for a particular employer for a considerable period of time. Party No. 1 has further pleaded that the Standing Orders are not applicable to the employees working in the Bank and they are governed by the Bipartite Settlements signed between the management and the unions from time to time and it is absolutely false to say that under the provisions of law, a casual or daily rated employee on completion of 60 days work becomes automatically a permanent employee of the

Bank and casual/daily rated employees are engaged by the Bank only occasionally for certain days for temporary work, particulary when a peon, safai karmachari or part time safai karmachari ("PTSK" in short) proceeds on leave or remains absent for any other reason and such temporary work is not available throughout the year and infact,when the work was available round the year and services of sub-staff were required by the Bank on a permanent basis, by following the proper procedure, some of the daily rated workers were engaged as PTSK etc. by the Bank in the past and when the work itself is temporary, the Bank engages the services of daily wagers in a purely temporary basis and the disengagement of temporary casual workers does not amount to termination at all and as such, the question of providing them work from time to time and making them regular employees does not arise at all and the union does not have any case on merit and therefore, irrelevant and voluminous documents are being asked to be produced, without furnishing the necessary details and so far as the daily rated employees are concerned, appointment letter or termination orders are not issued to them and as the casual employees are engaged purely on a temporary and on day to day basis, there is no question of transferring their services at point of any time and such casual daily rated workers are not entitled to claim the benefits and privileges which are available to the permanent employees of the Bank and no illegality was committed by the Bank and the workmen are not entitled to any relief.

4. Besides placing reliance on ducumentary evidence, both the parties led oral evidence in support of their respective claims.

Workmen, namely, Vinod G. Rind, Satish R. Ingle, Vishnu B. Samble, Ramesh S. Bhandarkar and Anil W. Lokhande, have been examined as witnesses by the union.

Devidas D. Khamnkar and Kamlakar Ramchandra have been examined as the two witnesses on behalf of the party no. 1.

The examination-in-chief of all the witnesses is on affidavit.

Workman, Vinod has stated that he was posted to Sahakar Bhavan, Amravati Branch of the Bank and worked for 60 days in each year from 1991 to 1996 and 1998 to 2001 and for 64 days in the year 1997.

Workman, Satish has stated that he was posted to Sahakar Bhavan, Amravati branch of the Bank and worked for 32 days, 52 days and 21 days in the years 1989, 2001 and 2002 respectively and for 60 days in each year from 1990 to 2000.

Workman, Vishnu has stated that he was posted to Sahakar Bhavan, Amravati Branch of the Bank and worked for 60 days in each year from 1989 to 1992 and 1994 to 2001 and worked for 42 days and 11 days in the years 1993 and 2002 respectively.

Workman, Ramesh has stated that he was posted at Nagpur and worked for 61, 58, 60, 65 and 77 days in the years 1993, 1995, 1996, 1997 as PSTK respectively.

Workman, Anil has stated that he was posted at Sahakar Bhavan branch, Amravati and worked for 60 days for each year from 1992 to 2001 and 9 days in 2002.

All of them have further stated that after their termination, new person was appointed for the same work, which was available round the year and the same was done to deny their claim for regularisation and on 1-12-1993, Bank had issued a circular stating that no employee should be appointed on casual or temporary basis for a period beyond 60 days and the said circular indicates that the management was aware that they were entitled to become permanent employees and their termination from services is illegal, improper and unjustified and they are entitled for reinstatement in services and wages for the period, during which outsiders were engaged in their places.

In their cross-examination, all the workmen except Ramesh have admitted that they did not work for 240 days in any year and they were not given any appointment letter and they were casual daily workers.

5. In their examination-in-chief, both the witnesses examined by the party no. 1 have reiterated the facts mentioned in the written statement. Though, these two witnesses have been cross-examined at length nothing of substance has been brought out in their cross-examination.

6. At the time of argument, it was submitted by the learned advocate for the union that the union raised the dispute on 1-10-1999 and 11-1-2000 and the workmen were appointed for a period of 60 days in each year, so that they should not claim any benefit under I.E.S.O. Act, 1946 and the Bank is covered by the provisions of the Bombay Shops and Establishment Act, 1948 and by virtue of Section 38 (B), the Standing Orders are applicable to it and at the time of terminating the services of the workmen, the provisions of the Bombay Shops and Establishment Act were not followed and the Bank is engaging a large number of persons on daily wage basis for short period of time, one after the other against the same vacancies, so as to ensure that persons so engaged would not be to complete 240 days of work in a consecutive period of 12 calendar months, instead of filling-up the vacancies on regular basis and such action of the Bank is quite illegal and unjustfied and the Bank violated the provisions of Section 25-H of the Act and Section 4-D of the Industrial Employment (Standing Orders) Act and the evidence of the workmen on affidavit clearly proves the claim made by the union and the affidavits of the witnesses examined on behalf of the management are totally baseless and as such, the workmen are entitled for the relief claimed in the statement of claim.

In support of such submissions, the learned advocate for the union placed reliance on the decision reported in

1996-II-LLJ-820 (Central Bank of India Vs. Satyam and others)

7. On the other hand, it was submitted by the learned advocate for the party no. 1 that at the time of necessity, the respective Branch Managers engage local persons on daily wages to carryout miscellaneous work, such as housekeeping, sweeping, cleaning, fetching and storing of drinking water etc. in the respective branches and such daily-wagers are engaged for limited period or days and they are paid their remuneration by the respective Branch Managers on vouchers and the daily wagers engaged in the Bank are not entitled to permanency or regularisation in the Bank as a matter of right and the union in question is not a majority union and as such, it has no right or locus-standi to agitate the grievance of the workmen and the work which was provided to the daily wagers was and is not always available and they were engaged during the hours of need, depending upon the availability of work and when work was not available, they were discontinued and such disengagement does not amount to termination of services by way of retrenchment and engagement of daily wager for 60 days cannot be said to be illegal labour practice and every daily wager is an outsider for the Bank, who has absolute no legal right to claim permanency or regularisation and the workmen are not entitled to any relief. It was further submitted by the learned advocate for the partry no. 1 that the party no. 1 have their own service regulations and the service conditions of the employees are governed by the Bipartite settlements entered into with the majority unions from time to time and standing orders are not applicable to the members of the Award staff of the party no. 1 and the workmen are not entitled to any relief.

In support of such contentions, the learned advocate for the party no. 1 has placed reliance on the decisions reported in 2006-II-LLJ-722 (Secretary, State of Karnatake and others Vs. Umadevi), 2008 I-CLR-908 (State of Maharashtra Vs. Anil Eknath Kharat), 2008-II-LLJ-977 (Sanjay Kumar Tiwari Vs. State of Bihar), 1996 (I) LLN-299 (State of Himachal Pradesh Vs. Suresh Kumar) and 1997 LABIC 2075 (Himanshu Kumar Vidyarthi Vs. State of Bihar)

8. In this reference, the shedule as given consists of two links. The first link is regarding retrenchment/ termination of the workmen and the second is about the legality of the action of the Bank in engaging large number of persons on daily wages basis for short periods one after the other.

So far the first link of the schedule of reference regarding the termination/retrenchment of the workmen is concerned, it is the case of the workmen that they were engaged for 60 days for several years by the Bank and after working for 60 days each year, their services were terminated, even though the work they were doing was available round the year and the termination amounts to retrenchment and the action of the Bank amounts to unfair labour practice. However, the party no. 1 has denied such claim and has stated that the workmen were engaged on daily wages temporarily as and when required on day to day basis and there is no question of termination of their services.

It is necessary to mention here that in the statement of claim, on page numbers 4, 5 and 6 the details of the working days of the 28 workmen year wise have been furnished by the union. On perusal of same, it is found that the claim of the workmen regarding their working for 60 days every year for several years (As mentioned in the schedule of reference and so also in the statement of claim) is not correct. According to the statement of claim, Vishnu worked for 60 days each year from 1989 to 1992 and worked for 42 days in 1993. Workman, Satish worked for 32 days in 1989. Workman Ashok worked for 40 days in 1989 and 55 days in 1990, workman Satish Annaji Wathodkar worked for 80 days in 1991, 14 days in 1992, 47 days in 1993 and 48 days in 1994, 50 days each year in 1995, 1996 and 1997. Workman Janrao worked for 5 days in 1987, 23 days in 1988 and 67 days in 1989. Workman Eknath worked for 56, 48, 52, 56, 43, 42 and 56 days in the years 1990, 1991, 1992, 1993, 1994, 1995 and 1996 respectively, workman Gajanan worked for 46 days in 1989-90, 137 days in 1990, 48 days in 1991, 98 days in 1992, 13 days in 1993, 142 days in 1994, 94 days in 1995 and 58 days in each year in 1996 and 1997. It is also found from the statement of claim that other workmen also did not work for 60 days in every year. It is also necessary to mention here that in the statement of claim, the names of the particular branches where the workmen were working have not been mentioned. No document except some zerox copies of payment vouchers of Satish Ingle and appointment order of Ramesh Sampatji Bhanarkar has been filed to show as to in which branches the workmen were working and for how many days they actually worked. Though the party no. 1 in their reply to the petition for production of documents and so also in the written statement had demanded for better particulars of the working of the workmen, such better particulars were never furnished by the union. It is clear from the evidence adduced by the parties and the pleadings of the union and so also the schedule of reference that none of the 28 workmen completed 240 days of work in any calendar year including in the preceding 12 calendar months of the alleged date of their termination.

At this juncture, I think it appropos to mention about the principles enunciated by the Hon'ble Apex Court reported in the decision reported in 1996-II-LLJ-820 (Supra), on which reliance has been placed by the learned advocate for the union. In the said decision, the Hon'ble Apex Court have held that:—

> "The benefit of applicability of Section 25-F can be claimed by a workman only if he has been in

continuous service for not less than one year as defined in Section 25-B. Any other retrenched workman who does not satisfy the requirement of continuous service for not less than one year cannot avail the benefit of Section 25-F which prescribes the conditions precedent to retrenchment of workman of this category."

As, in this csse, according to their own pleadings, none of the workmen was in continuous service of one year as defined in Section 25-B of the Act, i.e. 240 days service in 12 calendar months in a given year, their termination cannot be said to be retrenchment and they are not entitled for the benefits of Section 25-F of the Act. There is also no provision in any law or in the Standing Orders that when a workman is engaged for 60 days on daily wages by an employer each year for some years, the workman is entitled for permanency or regularisation in service by the employer. Hence, the workmen are not entitled to any relief.

9. So far the second link of the reference is concerned, it is well settled by the Hon'ble Apex Court in the decision reported in 2006-II-LLJ-722 (Supra), which has been cited by the learned advocate for the party no. 1 that,

"Inspite of this scheme, there may be occasions when the sovereign State or its instrumetalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without the reguired procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the constitution or for work in temporary posts or projects that are not needed permanently. This right of the union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are restored to, cannot be used to defect the very scheme of public employment. Nor can a court say that the union or the State do not have the right to engage persons in various capacites for a duration or until the work is a particular project is completed."

In this case, it is the admitted case that the workmen were engaged on daily wages basis at the time of necessity by party no. 1. The claim of the party no. 1 that such engagement was being made during the temporary absence of the permanent members of the sub-staff on leave or otherwise and such work is not available round the year has not been challenged or denied by the union. Though the union has mentioned the days of work of the workmen year wise in the statement of claim, the period (dates) of such engagement has not been mentioned to show that the engagement of the workmen was one after the other. Rather, the workman, Vinod in his cross-examination has stated that eight to nine persons were engaged daily by the Bank. From the said statement, it can be presumed that the engagement of the workmen was not one after the other, but simultaneously. So, applying the priniciples enunciated by the Hon'ble Apex Court as mentioned above to this case in hand, it is found that the engagement of some daily wagers by party no. 1 at the time of necessity for a limited period cannot be said to be illegal. However, party no. 1 has to follow the directions given by the Hon'ble Apex Court in the decision reported in 2006-II-LLJ-722 in this regard. Hence, it is ordered:—

ORDER

The reference is answered in negative. The workmen are not entitled to any relief. The party no. 1 Central Bank of India has to follow the directions given by the Hon'ble Apex Court in the decision reported in 2006 II- LLJ-722 (Secretary, State of Karnataka Vs. Uma Devi) in respect of engagement of daily wage workers.

J. P. CHAND, Presiding Officer

Annexure-F

Sl. No.	Name of the employees
	AMRAVATI REGION
1.	Shri Vishnu Bajirao Sambhe
2.	Shri Satish Ramkrishna Ingle
3.	Shri Ashok Wamanrao Lavankar
4.	Shri Satish Annaji Wathodkar
5.	Shri Nitin Dattopant Deshpande
6.	Shri Sunil Laxmanrao Shende
7.	Shri Janrao Sridhar Gondane
8.	Shri Eknath Kisanrao Erone
9.	Shri Pramod Yeshwantrao Ingle
10.	Shri Vinod Gulabrao Bind
11.	Shri Rajendra Kumar Gangadharpant Taide
12.	Shri Prakash Gulabrao Rawale
13.	Shri Dilip Kumar Vyas
14.	Shri Anil Vasudeorao Lokhande
15.	Shri Vijay Nilkanthrao Kalmegh
16.	Shri Manik Ramkrishna Dangre
17.	Shri Prashant Singh Subhash Singh Bhivarikar,
18.	Shri Jintendra Laxmanrao Polge
19.	Shri Suresh Bhaurao Dhage
20.	Shri Gajanan Bapurao Rajpure

NAGPUR REGION

21. Shri Yeshwant Janbaji Chourgade

22. Shri Ramesh Sampat Bhandarkar

AKOLA REGION

23. Shri Sunil Bhikaji Verulkar

24. Shri Pandurang Chandrabhan Deokar

25. Shri Sunil Laxman Deshmukh

JALGAON REGION

26. Shri Ravindra Pundlik Bagul

27. Shri Mahesh Madhukar Choudhari

28. Shri Sanjay Pitambar Tayade

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 51/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2012 को प्राप्त हुआ था ।

[सं. एल-12012/207/2001-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 8-8-2012.

[No. L-12012/207/2001-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI

I.D. No. 51/2011

Shri Sanjay Gambhir,
B-2, Plot No. 186,
Sector-4, Vaishali,
Ghaziabad (U.P)

.....Workman

Versus

The Regional Manager,
P. N. B., Regional Office,
Rajendra Bhawan,
Rajendra Place, New Delhi.

.....Management

AWARD

A Clerk-cum-Godown Keeper posted at Jangpura, New Delhi, branch of Punjab National Bank (In short the bank) went to Greater Kailash Part-I, New Delhi, branch of the bank on 15-10-1998. He reached Jangpura branch of the bank around 10.30 A.M. to manhandle Ms. Alka Nag, an officer of the bank. He shouted at the lady, pulled her hairs and dragged her in the hall. He called her characterless, alleging that she was having affairs with Shri Chawla, the Branch Manager. His riotous and disorderly behaviour disrupted customer service and working in the branch, Idris, Beat Constable, was present in the branch on his routine visit. He witnessed the entire scene and after obtaining a complaint from Senior Manager informed Shri Satyaveer Singh, Head Constable at P.S. Greater Kailash on phone. Shri Satyaveer Singh, Head Constable, reached the said branch and took Smt. Alka Nag and the said Clerk-cum-Godown Keeper to the Police Station. In the Police Station Smt. Alka Nag lodged a complaint against Shri Pardeep Chawla, Branch Manager.

2. The Branch Manager reported the incident to senior officers. The said Clerk-cum-Godown Keeper was suspended on 16-10-1998. A charge-sheet dated 21-1-1999 was served on him. Reply to the said charge-sheet submitted by the delinquent employee, was found not to be satisfactory. A departmental enquiry was constituted. Initially the delinquent employee participated in the enquiry. Subsequently, he opted to abstain away from the enquiry proceedings. The Enquiry Officer submitted his report to the Disciplinary Authority. A show cause notice on proposed punishment was served on the delinquent employee. After giving him a personal hearing, the Disciplinary Authority awarded punishment of dismissal without notice to the delinquent employee, vide order dated 14-3-2000. Aggrieved by the said order an appeal was preferred by the delinquent employee which was dismissed. He preferred a review petition before Chairman-cum-Managing Director of the bank, which was not considered since there was no such provision in bipartite settlements. The delinquent employee raised an industrial dispute before the Conciliation Officer. Since the matter could not be resolved, a failure report was submitted by the Conciliation Officer. On consideration of the said failure report, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. 12012/2001-IR (B-II) New Delhi, dated 22-4-2002, with the following terms.

"Whether the action of the management of Punjab National Bank, New Delhi in terminating the service of Shri Sanjay Gambhir by awarding the punishment of dismissal without notice vide order dated 14-3-2000 is in-commensurate with the gravity of misconduct committed by the workman? If not, to what relief the workman is entitled to and from which date?"

3. Corrigendum was issued by the appropriate Government, vide order No. 12012/2001-IR (B-II) New Delhi, dated 15-5-2002 modifying the terms of the reference, which are as follows:—

"Whether the action of the management of Punjab National Bank in terminating the services of Shri Sanjay Gambhir by awarding punishment of dismissal without notice vide order dated 14-3-2000 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

4. Claim statement was filed by the Clerk cum-Godown Keeper, namely, Shri Sanjay Gambhir pleading therein that in October 1998 he was posted at Jangpura, New Delhi, branch of the bank. On 15-10-1998 he had gone to Greater Kailash Part-I branch of the bank to see his collegue and neighbour Ms. Alka Nag. She used to accompany him to Delhi almost daily from Noida where they were staying in those days. He had gone to Greater Kailash Part-I branch of the bank to convey about his non-availability in the evening to transport her to Noida. When he was talking to her, Shri Pradeep Chawla, the Branch Manager, came out of his cabin.Without any rhyme or reason, he shouted at him. He took a serious objection and wanted to know about personal interest of Shri Chawla and his ill intention qua the lady. Shri Chawla instructed the claimant to get out of the bank premises. He also cautioned him not to develop any intimacy with Ms. Nag and not to visit that branch of the bank in future.When he maintained that he (Shri Chawla) could not restrain him from visiting the branch, Shri Chawla entered into an argument with him. Ms. Nag tried to pacify Shri Chawla. In the mean-while Police arrived at the spot as Shri Chawla had lodged a frivolous complaint against him. Shri Satyaveer Singh, Head Constable, took him and Ms. Nag to Police station for interrogation, where he recorded their statement. Ms. Nag refuted allegation of Shri Chawla and lodged a complaint against the latter of 'sexual harassment and molestation' at the bank premises. In view of all these facts Shri Satyaveer Singh, Head Constable, reported that no quarrel or disturbance took place at the bank premises.

5. Since Shri Chawla was inimical qua him, he reported the matter to the Disciplinary Authority on 15-10-1998. A distorted story of the incident was presented by Shri Chawla. On his report, the claimant was suspended on 16-10-1998. On 21-9-1999 a charge-sheet was served upon him giving him 7 days time to submit his reply. The charge-sheet was received by him on 29-1-1999, after a gap of 7 days from the date of its issue. However, he submitted his reply denying all allegations levelled against him. Bias and high handedness is apparent out of the fact that charge-sheet was served upon him on 11th hour, when time to submit reply was to expire.Though his reply was satisfactory but the bank decided to conduct an enquiry against him. Accordingly, vide order dated 16-2-1999 an Enquiry Officer was appointed. He participated in the enquiry proceedings to defend himself.

6. The claimant projects that the enquiry proceedings were fixed for 8-6-1999. Since he fell ill, hence he tried to establish contact with the Enquiry Officer on 7-6-1999. As the Enquiry Officer was on leave that day, hence he could not contact him. However, he conveyed his inability to attend the enquiry proceedings on 8-6-1999 to Shri R.P. Kakkar, the Presenting Officer. Shri Kakkar assured him that he would place factum of his illness before the Enquiry Officer on 8-6-1999. The claimant remained in dark in respect of the proceedings conducted on 8-6-1999 and on subsequent dates. Copy of the proceedings dated 8-6-1999 or of subsequent dates were never communicated to him. The bank was under an obligation to serve copy of enquiry proceedings on each and every date. He was unable to visit the bank to ascertain subsequent date from the Enquiry Officer, since he was debarred by the Disciplinary Authority from visiting the bank premises, vide order dated 16-10-1998. He shifted his residence from Noida to Mayur Vihar, Delhi, which fact was communicated to the Enquiry Officer. The Enquiry Officer opted not to inform him about scheduled dates of hearing at his changed address. It was so done to play a mischief with him.

7.The claimant further projects that on the strength of order dated 20-10-1999, conveyed at his new residence, the Enquiry Officer directed him to submit his written statement of defense. In compliance of the said order, he submitted his written statement of defense, wherein he questioned factum of non-examination of Ms. Alka Nag and Shri Satyaveer Singh, Head Constable, in the enquiry proceedings. When Police had not investigated her complaint, Ms. Alka Nag lodged a complaint of molestation and sexual harassment to the National Commission for Women, New Delhi. The claimant was made to understand that the Commission had directed the bank to get the mater inquired into from a Committee, formed in the light of judgment of the Apex Court in Visakha's case. This led to a situation where claimant was called upon by the bank to persuade Ms. Nag to withdraw her complaint. However, he flatly refused to be a tool for Shri Chawla and the Disciplinary Authority. On 15-12-1999 Enquiry Officer submitted his report wherein he concluded that the charges of misconduct stood proved. Vide order dated 23-12-1999, the Disciplinary Authority directed him to submit his representation, if any, in response to the finding of the Enquiry Officer. He submitted his representation dated

17-1-2000, wherein he questioned the procedure adopted by the Enquiry Officer and claimant that reasonable opportunity to defend was not accorded to him. He requested the Disciplinary Authority to review and reconsider/re-examine the matter afresh. However, to his utter surprise, vide memo dated 23-2-2000 a show cause notice was given to him to speak on proposed punishment. Vide his reply dated 13-3-2000 he requested the Disciplinary Authority to take a lenient view, in consideration of his tenure in service. However, the Disciplinary Authority acted in a malafide and biased manner and dismissed him from service, vide order dated 14-3-2000. He preferred an appeal which was rejected by the Appellate Authority on 4-9-2000. Under mis-conception he preferred a review petition before Chairman-cum-Managing Director which petition was not considered since there was no such provision in bipartite settlements. According to him,findings recorded by the Enquiry Officer would not stand, since Enquiry Officer acted contrary to law. He claims that report of the Enquiry Officer is wholly perverse. He agitated that the Disciplinary Authority become biased, when he failed to persuade Ms. Nag to withdraw her complaint against Shri Pardeep Chawla. According to him, interested employees of the bank were brought in the witness box. Ms. Nag and Shri Satyaveer Singh, Head Constable,were not examined who happened to be material and vital witnesses. No customer has been named in the list of witnesses, hence, claim that customer service was disrupted becomes frivolous. The claimant quashing of his dismissal order dated 14-3-2000 and reinstatement in service of the bank with full back wages and consequential benefits.

8. The bank counters the claim put forward and pleads that on 15-10-1998 at 10.30 AM the claimant went to the seat of Ms. Alka Nag and loudly shouted at her, her hairs and dragged her in the hall, resultantly Ms. Nag fell down on the floor. While doing so the claimant shouted at her. The utterances made by the claimant are reproduced thus:—

> "Iska koi charcter nahin hai, Iski khatir maine apni bivi ko chora hai aur yeh chawla ke saath lagi hui hai. Maine isko kaha tha ke bank mat ja lekin yeh nahin maani, main chhutti le kar aya hoon. Yeh characterless lady hai. Iska Chawla ke sath chakkar hai. Chawla ne apna transfer is branch main isi ke peeche karvaia hai."

9. The bank projects that riotous and disorderly behaviour of the claimant disrupted customer service and working of the bank. Claimant was suspended on 16-10-1998 and served with charge-sheet on 21-1-1999 for riotous, dis-orderly and indecent behavior on the premises of the bank, which is a gross-conduct. Since his reply to the charge-sheet found not to be satisfactory, departmental enquiry was constituted. Shri Subhash Chander, Manager (Staff) was appointed Enquiry Officer, while Shri R. P. Kakkar, Manager, was appointed as Presenting Officer. The Enquiry Officer gave sufficient opportunities to the claimant to defend himself. The claimant initially appeared and thereafter opted to abstain from the enquiry proceedings. He did not appear in the enquiry on 8-6-1999, 23-9-1999, 9-7-1999, 21-7-1999, 3-8-1999, 18-8-1999 and on 1-9-1999. The Enquiry Officer proceeded ex-parte and gave one more opportunity to the claimant to cross-examine the witnesses examined on 18-8-1999, fixing the date for 1-9-1999. The claimant did not turn up on 1-9-1999 also. Copy of the proceedings dated 1-9-1999 were sent to him vide letter dated 5-10-1999, for Enquiry Officer was on leave from 2-9-1999 to 1-10-1999. Vide his letter dated 14-10-1999, the claimant informed the Enquiry Officer about change in his address for communication. Enquiry Officer then sent a copy of the enquiry proceedings dated 1-9-1999 on his new address, advising the claimant to sent his written brief on 29-10-1999. All these facts project that reasonable opportunities to defend were given to the claimant but he did not participate in the enquiry proceedings except on two dates in initial stages. The Enquiry Officer submitted his report dated 15-12-1999.

10. The Disciplinary Authority forwarded report of the Enquiry Officer to the claimant on 23-12-1999 for making his submissions. The claimant submitted his comments vide letter dated 17-1-2000. After going through the findings of the Enquiry Officer, the Disciplinary Authority issued show-cause notice on 23-2-2000, proposing punishment of dismissal without notice. He was called for personal hearing on 7-3-2000 which date was re-scheduled for 13-3-2001 at his instance. He submitted his representation dated 13-3-2000. Disciplinary Authority considered the records and submissions made by claimant and confirmed punishment of dismissal without notice, vide order dated 14-3-2000. His appeal was dismissed by the Appellate Authority vide order dated 4-9-2000.

11. The bank projects that when a complaint was lodged by Shri Chawla to the police against the claimant, Ms. Alka Nag threatened him to withdraw that complaint otherwise to face case of sexual harassment. Subsequently the made a complaint against Shri Chawla alleging her sexual harassment at his instance. Shri Idris, Constable who was present in the branch on routine duty,witnessed entire scene and after obtaining a complaint from the Senior Manager, informed Shri Satyaveer Singh, Head Constable, about the incident. As reported by Shri Satyaveer Singh in daily diary entry that he had reached the branch that day when Constable Idris reported the matter on phone. It is evident, out of these facts that Shri Satyaveer Singh, Head Constable, reached the bank when incident had already taken place. It has been pleaded that reasonable time was given to the claimant to make reply to the charge-sheet. Extension of time would have been made, in case such a request would have come from the side of the claimant. It has been denied that the claimant informed the Presenting Officer about his inability to appear on 8-6-1999, on account of illness. Copies of proceedings of each and every date

were regularly sent to him. It has been asserted that the claimant was advised not to enter the bank premises without permission of the Branch Manager. When he wrote to the Enquiry Officer about his changed address, the Enquiry Officer again gave him one more opportunity to defend, which was not availed by him. Police opted not to take cognizance on the complaint of Ms Nag against Shri Chawla. Her complaint received from National Commission for Women was forwarded to the Complaints Committee, which investigated the matter and found no merit in her complaint. The bank presents that when claimant had attended proceedings on two dates initially, that is, on 11-5-1999 and 19-5-1999, he was well aware that proceedings were in progress. He willfully absented himself to avoid proceedings. It has been denied that the Enquiry Officer was biased. It was open for the claimant to examine Ms. Nag and Shri Satyaveer Singh, Head Constable, during enquiry proceedings. A claim has been made that disciplinary action taken against claimant,was in accordance with bipartite settlements and punishment inflicted comensurate with the gravity of allegations, established against him. He is not entitled to any muchless the relief of re-instatement with back wages. It has been claimant that his claim statement may be dismissed, being devoid of merits.

12. On pleadings of the parties, following issues were settled by my Ld. Predecessor:—

1. Whether the enquiry conducted against the workman was appropriate and justified? If not its effect?
2. Whether the action initiated by the department of termination is malafide?
3. Whether action of the department is violation of principles of natural justice, as claimed?
4. Whether penalty of dismissal imposed upon workman is dis-proportionate to the alleged misconduct?
5. Whether the workman is entitled to re-instatement with back wages and other reliefs?

13. The claimant has examined himself, Ms. Alka Nag and Shri Satyaveer Singh, Head Constable to substantiate his claim.

14. Shri Subhash Chander , Ms Ram Pindlesh and Shri Ashwani Kumar entered the witness box to testify facts on behalf of the bank. No other witness was examined by either of the parties.

15. Vide order No. 2-22019/6/2007-IR (C-II), New Delhi dated 11-2-2008, the case was transferred by the appropriate Government to Central Government Industrial Tribunal No. II, New Delhi, for adjudication. Vide order No. 2-22019/6/2007-IR (C-II), New Delhi dated 30-3-2011, the appropriate Government re-transferred the case to this Tribunal for adjudication.

16. Arguments were heard at the bar. Claimant raised his submissions in person. Shri Ashwani Kumar Sharma, Deputy Manager, presented facts on behalf of the bank. Written arguments were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings of issues involved in controversy are as follows:—

ISSUE Nos. 1 & 3:

17. In his affidavit Ex. WW-1/A, tendered as evidence, claimant swears that Shri Pramod Chawla, Branch Manager was bent upon to victimize him one way or the other on account of his friendly relations with Ms. Alka Nag, an Officer of the bank. Charges, mentioned in the charge-sheet,were actuated at the behest of Shri Chawla. When he went to inform Ms. Nag on 15-10-1998 about his unavailability in the evening to pick for her residence, Shri Pardeep Chawla noticed him and started shouting at him. Shri Chawal used to sexually harass Ms. Nag.She lodged a complaint in that regard with the police on that day. Complaint of Ms. Nag was not taken over the record. He relied upon that complaint alongwith his reply in response to show-cause notice dated 23-2-2000. The Disciplinary Authority had not taken note of that complaint and acted illegally and in malafide manner. A representation dated 28-10-1999 was made by him to the Enquiry Officer wherein it was detailed that on 1-12-1998 at about 4:00P.M. Shri D.D. Sharma, Senior Manager, arranged his meeting with Shri V.K. Nagar, Senior Regional Manager. Shri Nagar heard him on entire datails and then scolded as to why he got complaint of sexual harassment filed against Mr. Pradeep Chawla before police as well as National Commission for Women. When he told Shri Nagar that it was her personal matter, at that juncture he threatened of dire consequences. He asserts that the Enquiry Officers as well as Disciplinary Authority had acted in a biased manner and cannot be called independent authorities.

18. When an employee abstains from the enquiry, the Enquiry Officer would be constrained to proceed him exparte and generally his report cannot be quenstiond claiming that principles of natural justice were violated. However, one of the fundamental principles of natural justice, applicable to quasi judicial proceedings, is that the authority empowered to decide must be one without bias towards one side or the other, Bias means an operative prejudice whether conscious and unconscious in relation to a party or issue. Hence bias may improperly influence a judge in arriving at decision to any particular case. Rule against bias strikes against those factors and requires that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. Bias may be defined as "anything which tends or may be regarded as tending to cause such a person to decide a

case otherwise on evidence" and in case judge acts in that fashion he must be held to be biased. If a person, for whatever reasons, cannot take an objective decision on the basis of evidence on record, he shall be said to be biased. A person cannot take an objective decision in a case in which he has an interest for, as the psychologists tell us, very rarely can people take decision against their own interest. Therefore, the maxim that a person cannot be made a Judge in his own cause, rules as one of the guiding factors of the principles of natural justice. This rule of disqualification is applied not only to avoid possibility of a wrong decision but also to ensure to be confident in the impartiality of the administrative adjudication process. Minimum requirement of natural justice is that the authority must be composed of impartial persons acting fairly, without prejudice and bias. A decision which is result of bias is nullity and the trial is "Coram non judice." Reference can be made to the precedent in Ranjeet Thakur [1987 (4) SCC 611].

19. Inference of bias, therefore, can be drawn only on the basis of factual matrix and not merely on the basis of insinuation, conjectures and surmises. Bias manifests in variform and may affect the decision in veriety of ways. Personal bias arises from a certain relationship equation between the deciding authority and the parties which incline him unfavourably or otherwise on the side of one of the parties before him. Such equations may develop out of varied combinations of personnel or professional hostility or frinendship. In order to challenge administrative action successfully on the ground of personal bias, it is essential to prove that there is a "reasonable suspicion of bias" or a " real likelihood of bias". "Reasonable suspicion" test looks mainly to outword appearances while "real likelihood" test relates to the course of evaluation of possibilities, but in practice the tests have much in common with one another and in the vast majority of cases may lead to the same result. For this area of bias the real question is not whether a person was biased. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is a reasonable ground for believing that the deciding officer was likely to have been biased. In deciding the question of bias, the judge have to take into consideration the human possibilities and the ordinary course of human conduct. But there must be real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by bias. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vagure suspicion of whimsical, capracious and unreasonable people. Reference can be made to the precedents in Metropolitan Properties Ltd. [1968 (3) All E.R. 304] S.N. Jodhawat [I.L.R. (1981) 31 Raj. 137] and B.B. Rajvanshi (1988) (2) SCC 415].

20. In Jiwan K.Lohia [1992 (1) SCC 56], upholding the decision of the High Court while removing an arbitrator appointed by the court on the ground of bias, the Apex Court observed that with regard to the bias the test to be applied is not whehter in fact bias has affected the judgement but whether a litigant could reasonable apprehend that a bias attributable might have operated against him in final decision. The test of bias is whether a reasonable man in best of relevant opinion, would have thought that the bias was likely and whether the persons concerned, "was likely to be disposed of to decide the matter only in a particular way." Therefore, the real test of "real likelihood of bias" is whether a reasonable man in possession of relevant information would have thought that bias was likely and whether the authority concerned was likely to be disposed to decide the matter in a particular way. What is relevant is the reasonable apprehension in that regard in the mind of the party. As the proper approach in case of bias for the court, is not to look into his own mind and ask "Am I biased?" but to look into mind of the party before it. The Court must look at the impression which would be given to the other party. Even if the deciding officer was an impartial as could be, nevertheless if right minded person would think that, in the circumstances, there is a real likelihood of bias, the deciding officer is disqualified. Therefore, the court would not enquire whether there was bias in fact. It would suffice if reasonable people might think that there was a bias. The reason is plain enough, write Lord Denning," justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking: "the judge was biased." See the Discipline of Law (1982) at Pp. 87. On this court in Municipal Properties Ltd. (supra) it was ruled that Mr. Lannon was disqualified from sitting as Chairman of a Rent Assessment Committee, because his father was a tenant and had case pending against that committee. Even though it was acknowledged that there was no actual bias and want of good faith on the part of Mr. Lannon."

21. Now it would be considered whether the claimant could show a case of real likelihood of bias on the part of Enquiry Officer Disciplinary Authority. He narrates that Enquiry Officer had not taken note of contents of his representation dated 28-10-1999 proved as Ex.WW-1/7. He claim that the Enquiry Officer was moved with bias and no reasonable opportunity was given to him to defend himself. Whether these aspects would project real likelihood of bias in the present matter. For an answer I have scrutinized Ex-WW-1/7 carefully. This document asserts that when he was called upon by the Enquiry Officer to make his statement of defense, the claimant presented his appreciated of evidence recorded during the course of enquiry and discussed all facts unfolded by the witnesses. He details that in last week of Nov. 1998 he was advised by Shri D.D. Sharma to give a representation. Shri Sharma told him that Shri. V.K. Nagar was willing to meet him. He met Shri Nagar on 1-12-1999 at about 4.00 PM. in the office of the latter. According to him at that time Shri Nagar qustioned him as

to why he got a complaint filed from Ms. Alka Nag relating to her sexual harassment against Mr. Pradeep Chawla in police as well as National Commission for Women. Facts unfolded by the claimant Ex-WW-1/7 are bald assertions. No circumstances are detailed therein which may give some confirmation of those facts. On the other hand the claimant opted not to participate in the enquiry to prove those allegations. Under those circumstances the enquiry officer was justifed in not taking a note of those allegations. The claimant asserts that the charge-sheet was actuated at the instance of Shri Pradeep Chawla, Branch Manager, who had on an evil eye on Ms. Alka Nag. He asserts that Ms. Alka Nag lodged a complaint against Shri Chawla in the Police Station as well as before National Commission for Women. According to him, the Enquiry Officer had not appreciated those facts,which shows his professional bias in favour of the bank and Shri Chawla. When these circumstances are taken into account in the light of entirety of facts it emerged over the record that story projected by the claimant is farther from truth. As per his own case, he came from NOIDA along with Ms. Alka Nag, dropped her at Greater Kailash Part-I branch and then went to Jangpura branch to join his duties. There at his work place he took leave since some work was to be performed. Ater taking leave he immediately approached Ms. Alka Nag to inform his un-availability in the evening. He does not opt to inform her on telephone from Jangpura branch or from destination where he was supposed to go during day hours. As per his own admissions he reached Greater Kailash Part-I Branch at 10.30 A.M. He was talking to Ms. Nag when Shri Chawla allegedly shouted at him. Shri Idris, Beat Constable, reaches Greater Kailash Part-I branch and informs Shri Satyaveer Singh, Head Constable, on phone about the incident. Shri Satyaveer Singh reaches there and took Ms. Nag as well as claimant to the police station for interrogation. Hed there been no clamour there was no necessity on the part of Satyaveer Singh, Head Constable, to take the lady and claimant to the police station.

22. The claimant was suspended on 16-10-1998. He opted to keep silence till charge-sheet was served upon him on 21-1-1999. What prevented the claimant from reporting the incident to his officers at the earliest possible opportunity, in case it was an incident of shouting at her by Shri Pradeep Chawla ? No answer to this proposition has been offered. Complaint of sexual herassment by Ms. Nag against Shri Pradeep Chawla in the police was made on 15-10-1998. Prior to that date she never raised any eyebrow. All these circumstances speak volumes about veracity of the story projected by the claimant. The Enquiry Officer assessed facts in right perspective and his assessment of evidence nowhere project a real likelihood of bias against the clamant.

23. A claim has been made that the Disciplinary Authority was also biased against him. However, claimant raises such an issue for the first time in his memorandum of appeal dated 8-5-2000. In punishment order dated 14-3-2000, the Disciplinary Authority narrated the circumstances which took place during personal hearing. It has been reported therein that the claimant admitted his guilt before him. The claimant narrated circumstances in which he had gone in depression and behaved in particular manner on 15-10-1998. He regretted on the incident and made a prayer that ultimate penalty of dismissal may not be awarded, in view of his past record of service. After narrating those facts the Disciplinary Authority assessed the matter and brused aside the submissions made by the claimant. He awarded punishment of dismissal without notice to the claimant vide order dated 14-3-2000. In his memorandum of appeal Ex-WW-1/13 the claimant raised a finger on independence of the Disciplinary Authority.

24. The Disciplinary Authority considered the record in entirety. He was enjoined with a duty to award appropriate punishment to the delinquent employee. As per findings recorded by the Enquiry Officer, charge stood proved against the claimant. Therefore the Disciplinary Authority would have awarded punishment to the claimant without recording facts relating to admission of his guilt. However, he honestly recorded those facts and passed an order of punishment on the delinquent employee. The record nowhere projects that any official or personal bias reflects out of the act of the Disciplinary Authority.

25. Even otherwise there is other facet of the coin. The claimant never raised a question as to the independence of the Disciplinary Authority till order of punishment was passed on him. He got date for personal hearing re-fixed and appeared before the Disciplinary Authority and presented facts in person. Thus it is emerging over the record that claimant did not object about integrity of the Disciplinary Authority and took a chance of having favorable orders from him. Having done so it is now not open to him to turn around and question integrity of the Disciplinary Authority. If legal precedent is needed on this proposition, reference can be made to R.P. Bhasin (LPA No. 27/94 decided by the Division Bench of Delhi High Court on 23-11-2000). In view of the reasons detailed above, contention advanced by the claimant that the Enquiry Officer and Disciplinary Authority were biased, is hereby brushed aside.

26. The claimant projects that no reasonable opportunity was accorded by the Enquiry Officer to defend him. However, it is an admitted case that the claimant appeared before the Enquiry Officer on 11-5-1999 and 19-5-1999, on which dates two witnesses were examined by the Presenting Officer. These facts bring it over the record that an appropriate notice was given to the claimant by the Enquiry Officer, calling upon him to participate in the enquiry. In that notice date, time and place of the enquiry were mentioned. Claimant availed the opportunity

and appeared before the Enquiry Officer to defend himself. He took part on two dates, cross-examined the witnesses himself, without availing services of a defense representative. It is not the case of the claimant that services of defense representative of his choice could not be availed on account of circumstances created before him by the Enquiry Officer. After attending two dates the claimant opted not to appear in the enquiry proceedings on 8-6-1999, 23-6-1999, 9-7-1999, 21-7-1999, 18-8-1999 and 1-9-1999. He attempts to forge a case that he tried to contact the Enquiry Officer on 7-6-1999, since he was unable to attend proceedings on 8-6-1999 on account of his ailment. As Enquiry Officer was on leave, he could not contact him. He contacted the Presenting Officer and detailed his inability to join the proceedings on 8-6-1999. Thereafter he remained in dark as to how and in what manner the enquiry proceeded. According to him, the Enquiry Officer was under an obligation to inform him by way of registered letters about each and every date of enquiry, fixed thereafter. Alas! submissions made by the claimant have no weight. Paragraph 19.16 of Bipartite Settlement dated 19-10-1996 gives procedure for service of notice, orders, charge-sheet, communication or intimation on an individual employee. It has been provided therein that in case of an absent employee notice shall be sent to him by registered post with acknowledgement due. Here the claimant is misconceived. Term "absent employee" in above clause refers to an employee who is absent from his duty or overstays leave without any permission. It does not deal with the case of an employee who has been suspended and proceeded departmentally. It has further been provided therein that when an employee refuses to accept any notice, order, charge-sheet, communication or written intimation, in connection with the disciplinary proceedings, such refusal shall be deemed to be a good service upon him. Procedure provided in paragraph 19.16 of above Bipartite Settlement deals with the manner of service of charge-sheet, notice, communication or intimation. Here in the case, service of the charge-sheet is not matter of dispute. It is also not a matter of dispute that the Enquiry Officer served a notice on him and the claimant attended enquiry proceedings on two dates. Thereafter, there was no other stage available to the Enquiry Officer to send any order, communication or intimation to the claimant. Therefore, his claim that the Enquiry Officer was under obligation to get him served in respect of proceedings of each and every date is unfounded.

27. Even otherwise it is admitted case of the claimant that the Enquiry Officer called upon him to submit his written statement of defense and he made representation which is Ex. WW-1/7. As emerged over the record, the claimant nowhere asserts that a medical certificate was sent alongwith an application for seeking adjournment on the dates after 8-6-1999. He keeps a posture of silence till the enquiry came to an end. No written request was sent by him either to the Enquiry Officer or Presenting Officer seeking subsequent date on which the enquiry was to be held. He was under a legal duty to enquire of the date, which he failed to do. He could not establish any reason for his absence on 8-6-1999 or thereafter.

28. The Enquiry Officer was constrained to proceed him exparte. It emerged over the record that opportunity to show cause was given to the claimant by the Enquiry Officer. Under these circumstances the Enquiry Officer is exonerated of his duty to give a reasonable opportunity to delinquent official concerned. Law to this effect was laid in Joseph John [1956 (1) LLJ 235].

29. When the claimant did not avail the opportunity then subsequently he cannot challenge the enquiry which was continued in his absence, claiming it to be violative of principles of natural justice. If a workman intentionally refused to participate in the enquiry he cannot complain that his dismissal is against principles of natural justice. Law to this effect was laid in Sadul Textiles Mills Limited [1957 (1) LLJ 572], Bagchi (P. N.) & Co. Private Limited [1959 (1) LLJ 605], Muir Mills Company Limited (24 FJR 123), Major U.R. Bhatnagar [1962 (1) LLJ 656], Ghansham Dass Srivastava [1968 (2) LLJ 246] and Laxmi Devi Sugar Mills [1957 (1) LLJ 17].

30. Normally in a judicial proceedings a party is not to be heard who absents himself from the hearing and if the quasi judicial authority holds proceedings exparte in such a case, then it will not amount to misconduct on his part. Law to this effect was laid in S. Govinda Menon [1973 (2) LLJ 369]. In veiw of these proposition of law, it is crystal clear that the Enquiry Officer cannot be held guilty of violating the principles of natural justice. Under these circumstances, the bank may argue that it was beyond the competence of Enquiry Officer to accord an opportunity of being heard to the claimant.

31. The object of an enquiry is to find the truth and all steps which are conclusive to this end must be deemed necessary and any unjustified interference with any of those steps must necessarily bring about prejudice, amounting to denial of reasonable opportunity to the charge-sheeted employee to show-cause against the action proposed to be taken against him. Though the Enquiry Officer is an agency of the Disciplinary Authority, yet he has to act as an independent person. He has to accord fair opportunities to both parties, viz. the Presending Officer and the charge-sheeted employee to prove their respective cases. He has to make a balance between the requirements of business and discipline on one hand and dignity of charge-sheeted employee as a human being on the other. He exercises quasi-judicial functions, devoid of procedure prescribed for trials in courts. He can, unlike courts, obtain all information material for the points under enquiry from all sources and through all channels, without being fettered by rules and procedure. The only obligation which the law

casts on him is that he should not act on any information which he may receive unless he puts it to the party against whom it is to be used and to give him a fair opportunity to explain.

32. There is no provision in law, under which the Enquiry Officer can compel attendance of witnesses. It is open to parties to summon their evidence, oral or documentary, which they consider necessary, and if one or the other party omitted to summon a witness or a document, the Enquiry Officer cannot be blamed for it, nor the enquiry rendered defective or unfair on that account. See General Electric Co. of India Ltd. [1968 (1) LLJ 731] and Tata Engineering and Locomotive Co. Ltd. [1969 (II) LLJ 799]. Normally, it is for a party to examine his witnesses but where the witness is under the control of the management then it must allow the witness an opportunity to come forward and testify before the Enquiry Officer. The failure of a party to produce the relevant oral or documentary evidence may be prejudicial to its case.

33. In Tata Oil Mills Co. Ltd. [1964 (2) LLJ 113] the charge-sheeted workman wanted to examine certain witnesses before the Enquiry Officer and, therefore, requested the Enquiry Officer to call those witnesses to give evidence. Though the Enquiry Officer told the workman that it was not a part of his duty to call the witnesses and he should in fact have kept them ready himself, yet he wrote letters to those witnesses in order to assist the workman. One of the witnesses wrote back expressing his inability to be present while the other sent an unsigned reply asking for a few days time on which the Enquiry Officer took no action. The enquiry proceeded without examination of those witnesses. When the matter reached the Apex Court it held that if the workman did not take steps to produce his witnesses before the Enquiry Officer, it could not be said that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice. The enquiry was held to be fair as the Enquiry Officer had given ample opportunity to the workman to lead his evidence. Same view was taken by the Apex Court in R.K. Jain [1971 (2) LLJ 599].

34. In view of the precedents referred above it is crystal clear that responsibility of producing witnesses in a domestic enquiry rests with the parties concerned and not with the Enquiry Officer. When a party fails to produce relevant and material evidence, oral or documentary, it does so at the cost of causing prejudice to its own case. The Enquiry Officer would appreciate the material produced before him, while recording his findings on the charges framed against the employee. The Enquiry Officer cannot impose upon a party to examine a particular witness. He does not have the authority to summon witnesses himself and to examine them, if a party does not want to produce that witness. Therefore, it is either for the bank or for the delinquent employee to examine a witness before him. Since no power to summon a witness vests in the Enquiry Officer, it cannot be said that non-examination of a witness would lead to a conclusion that the enquiry conducted was not fair and proper. Consequently non-examination of Ms. Nag and Satyaveer Singh before the Enquiry Officer would have no bearing in the matter. No accusing finger can be raised on the Enquiry Officer in that regard.

35. Enquiry report was perused to ascertain as to whether it was based on evidence produce before the Enquiry Officer or perverse. For this purpose the Tribunal has to assess the report to know whether findings recorded is based on material available on record. What are the standards on which the Tribunal may record its "satisfaction" to the effect that findings of misconduct, recorded by the Enquiry Officer, is correct ? One of the tests, which the Tribunal is entitled to apply, is whether the conclusion of the Enquiry Officer was perverse or whether there was basic error in approach adopted by him. There should be a report recorded by the Enquiry Officer and there should be correlation between the evidence and findings recorded, showing application of mind. Findings of the Enquiry Officer must be supported by legal evidence. Report of the Enquiry Officer will be vitiated where he acts malafide, that is, ignored or excluded from consideration a vital and material piece of evidence or took into consideration any irrelevant or extraneous material or where he transgressed rules of natural justice by being biased against the workman or denied to him a reasonable opportunity to defend or where his report is perverse, id est the findings are not supported by any evidence or entirely opposed to the evidence on record. Reference can be made to precedent in Ved Prakash Aggarwal (1996 Lab. I.C. 120) and S.C. Prasad [1969 (II) LLJ 799]. However, it must be borne in mind that the person appointed to hold such enquires are not lawyers. A wrong findings is not necessarily a perverse finding and a finding cannot be described to be perverse merely because it is possible to take a different view on the evidence. See precedents in Parry & Co. [1966 (I) LLJ 535] and New Victoria Mills Ltd. (1970 Lab. I.C. 428). Law laid in Ved Prakash Aggarwal (supra) and Elgin Mills Co. [1981 Lab I.C. (NOC) 172] also supports that view.

36. In deciding the question as to whether a particular conclusion of fact was perverse or not, the Tribunal would not be justified in weighing the evidence for itself and determining the question of perversity of the view arrived at by the Enquiry Officer in the light of his on findings on the question of fact. See Hamdard Dawakhana Wakf [1962 (II) LLJ 772]. In a domestic enquiry, once a conclusion is decided from evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the some evidence. Reference can be made to Banaras Electricity Light and Power Co. Ltd. [1972 (II) LLJ 328]. Legal position, detailed in above precedents, changed on introduction of section 11A of the Act.

37. In Powari Tea Estate [1965 (II) LLJ 102] and Khardah and Co. Ltd. [1963 (II) LLJ 452] the Apex Court ruled that the enquiry report is a document which will have to be closely examined by the Industrial Tribunal when a dispute pertaining to disciplinary action against the employee is brought before it for its adjudication. The Calcutta High Court declares in Howrah Trading Co. (Pvt.) Ltd. [1996 (II) LLJ 282] that a cryptic report, for instance, without stating any reasons will be of little value. Failure of the Enquiry Officer to record his findings and conclusions at the end of the enquiry would render the enquiry invalid. Non-production of the enquiry report before the Industrial Tribunal led to a declaration that the enquiry was invalid, when there was no evidence that a report was at all recorded by the Enquiry Officer. See Samnuggur Jute Factory Co. Ltd. [1994 (I) LLJ 634]. In Prakash Chand Jain [1969 (II) LLJ 377] the Apex Court announced that the report of the Enquiry Officer must be suported by legal evidence. In Rajinder Kumar Kindra [1984 (II) LLJ 5245] it was further stated by the Supreme Court that where findings are based on no legal evidence and are either ipse dixit or based on conjectures and surmises unrelated to evidence and they disclose non-application of mind, such findings and conclusions are perverse.

38. Report of the Enquriy Officer has been scrutinized by me. As emerged out of report dated 15-12-1999 Enquiry Officer details dates on which the proceeding were conducted. It has also been mentioned how many witnesses were examined and how many documents were proved. He had detailed the steps by him for procuring attendance of claimant, when he abandoned proceedings w.e.f. 8-6-1999. It has further been mentioned that copy of the proceedings dated 1-9-1999 was sent to the claimant with an advice to sent his written brief. The claimant informed him of his changed residence and communication was sent at the changed address also. The claimant submitted his written bried. The Enquiry Officer detailed the submissions of the claimant made in the brief as well as the submissions of the Presenting Officer. He appreciates the facts testified by Smt. Rama Bindlesh and reaches a conclusion that the charges levelled against the claimant stood established. Since neither any evidence was produced by the claimant nor testimony of Smt.Bindlesh was assailed, the Enquiry Officer relied the facts unfolded by her and concluded that the charges stood proved. Out of report dated 15-12-1999 it has emerged over the record that the Enquiry Officer recorded his findings on the basis of evidence produced before him. His findings are in consonance with the evidence and one cannot say that these findings are based on extraneous material. I have no reason to believe that the enquiry report is not perverse.

39. There is other facet of the coin. Bank opted to adduce evidence with a view to prove charges before this Tribunal. Shri Subhash Chandra had tendered his affidavit dated 20-7-2006 as evidence. He swears therein that he was appointed as Enquiry Officer and he started enquiry on 11-5-1999. The claimant attended proceedings on 11-5-1999 and 19-5-1999, on which dates he recorded statement of Shri Ashok Kumar Seth and Shri D.P. Sharma. They were cross-examined by the claimant. Thereafter claimant failed to appear before him on 8-6-1999, 23-6-1999, 9-7-1999, 21-7-1999, 3-8-1999, 18-8-1999 and 1-9-1999. Claimant was proceeded ex-parte. However he gave one more opportunity to the claimant to cross examine witnesses examined by the bank, whose statements were recorded on 18-8-1999 and 1-9-1999. The claimant did not turn up even on 1-9-1999. Copy of the proceedings of that day was sent vide letter dated 5-10-1999. Claimant informed him vide letter dated 14-10-1999 about change in address for communication. Proceedings dated 1-9-1999 were again sent advising him to send his written brief by 1-11-1999, since the enquiry proceedings were already concluded by then. Claimant submitted his written brief on 29-10-1999. He recorded his enquiry report and submitted it to the Disciplinary Authority. (He had also detailed steps taken by the Disciplinary Authority before award of punishment to the claimant). During the course of his cross-examination, the claimant could not project any reason for his absence on the aforesaid dates. He also failed to question the steps taken by the Enquiry Officer,calling upon him to join the enquiry proceedings. Thus, it is emerging over the record that the claimant has not been able to dispel facts unfolded by Shri Subhash Chander, the Enquiry Officer.

40. Smt. Rama Bindlesh tendered her affidavit dated 24-5-2005 as evidence. In her affidavit she swears that on 15-10-1998 around 10.30 AM the claimant reached Greater Kailash Part-I branch of the bank. He went to the seat of Ms. Alka Nag and shouted loudly on her. He dragged her by hairs in the hall. Resultantly Ms.Nag fell down on the floor. While dragging he shouted.

> "Iska koi character nahin hai. iski khatir maine apni bivi ko chora hai aur yeh chawla ke saath lagi hui hai. Maine isko kaha tha ke bank mat ja lekin yeh nahin maani, main chutti le kar aya hoon. Yeh characterless lady hai. Iska chawla ke sath chakkar hai. Chawla ne apna transfer is branch main isi ke peeche karvaia hai."

41. Miss Bindlesh declares that on account of riotous and disorderly behaviour of the claimant customer service and working of the branch was disrupted. During the course of her cross-examination the claimant could not raise even an eyebrow on her testimony. He filed to brand Miss Bindlesh as inimical qua him. No evidence worth name came over the record to the effect that Miss Bindlesh was having feelings of ill-will qua him and was motivated to testify facts against him. He nowhere disputes presence of Miss Bindlesh in the branch at the time of incident. Veracity of her testimony stands to reasons, if it is appreciated in

the circumstances detailed by her. I find no reasons to discard deposition of Miss Bindlesh. Circumstances portraited protracted by Miss Bindlesh project the case of the bank in toto.

42. To rebut facts unfolded by Ms. Bindlesh, the claimant has pressed in service his affidavit Ex. WW-1/A wherein he swears that when he was conveying his inability to Ms. Nag to transport her to her residence in the evening Shri Pradeep Chawla shouted at him. According to him Shri Pradeep Chawla was having an evil eyen Ms. Nag and in the light of that situation Shri Chawla shouted at him. Facts, which the claimant wants to project, are nothing but an after-thought. As projected abovt till the charge-sheet was served on him he adopted a posture of silence. There was no necessity for him to go to Greater Kailash Branch of the bank, since he could have informed Ms. Nag on telephone about his un-availability to transport her in the evening. Further more why Ms. Bindlesh speaks evil of him has not been explained. He made Ms. Alka Nag to enter into witness box to project a corroborative story. However, facts unfolded by Ms. Nag in her affidavit dated 7-4-2005 nowhere highlight that Shri Chawla ever attempted to exploit her prior to 15-10-1998. Her intimacy with the claimant led her to coin a convenient story and made every effect to re-affirm it. I do not find any substance in circumstances unfolded by Ms. Nag. Shri Satyaveer Singh, Head Constable, reached Greater Kailash branch when he was informed about the incident on telephone by Shir Idris, Constable. He narrates the very story which claimant and Ms. Nag espouse and claims that there was no substance in the information passed over to him. He could not explain as to why Shri Idris passed on that information to him. It has not been detailed by him as to why he took claimant and Ms. Nag to the police station when the claimant has not behaved in indecent manner with the lady. Shri Idris was the appropriate person to tell facts, since he had witnessed the incident. In case any person who can affirm or dislodge a story put forward by the claimant and Ms. Nag as either Shri Idris or employees of the branch.before whom the incident took place. None from the came forward to discard facts unfolded by Ms. Bindlesh. The behaviour shown by the claimant is like one shown by actor Salman Khan on the set film "chalte-chalte", when he misbehaved with actress Aishwariya Rai. Such behaviour projects base character of the person.Considering all these aspects, I am of the view that events unfolded by Ms. Bindlesh go to corroborate the report of the Enquiry Officer. I have no hesitation in concluding that the bank has been able to establish misconduct of the claimant. Even otherwise the enquiry is found to be legal and proper. Principles of natural justice were followed. Hence issue Nos. 1 and 3 are answered in favour of the bank and against the claimant.

Issues Nos. 2 and 4

43. As proved above claimant reached Greater Kailash Part-I branch of the bank on 15-10-1998 at about 10.30 AM. He was furious at that time. He reached the seat of Ms. Alka Nag, pulled her hairs and dragged her. He made her to fall on the floor. While behaving riotously he uttered indecent words which are reproduced again as follows:

> "Iska koi character nahim hai. Iski khatir maine apni bivi ko chora hai aur yeh chawla ke saath lagi hui. hai Maine isko kaha tha ke bank mat ja lekin yeh nahin maani, main chutti le kar aya hoon. Yeh characterless lady hai. Iska Chawla ke sath chakkar hai. Chawla ne apna transfer is branch main isi ke peeche karvaia hia".

44. Thus it is emerging over the record that the claimant committed disorderly, riotous and indecent behaviour qua Ms. Nag. He disrupted costomer service and working of the branch as unfolded by Ms. Bindlesh. What should be the appropriate punishment,which can be awarded to the claimant, is a proposition which would by addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfattered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order punishment on finding that the order of dismissal was too severe and was not commensurative with the act of misconduct. In other words,the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court in this connection, had however, laid down in Bengal Bhatdee Coal Company [1963 (I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismiassal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

45. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decided and normally it should not be

interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965 (I) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dimissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive langugage against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight- jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Eash case has to be considered on its facts"

46. In B.M. Patil [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humnism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

47. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstances of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the [illegible] Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is saisfied that the order of discharge or dimissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two fold powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of [illegible] of quantum of punishment.

48. In [illegible] [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is nothing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in C.M.C. Hospital Employees Union [1987 (4) S.C.C. 691] wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowda Educational Trust [2006 (1) S.C.C. 430] the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

49. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa [1995 (I) LLJ 960].

50. The claimant was charged for riotous, disorderly and indecent behaviour in the premises of the bank. Expression "riotous, disorderly and indecent behaviour" is very wide in its scope. It covers acts of nuisance on one hand and acts of assult and riotousness on the other. Fighting, assulting, abusing, drunkenness etc. on the premises of an establishment are some of instances of riotous or disorderly behaviour. Acts which are subversive of discipline being of riotous and disorderly nature amongst employees would constitute misconduct. If the conduct prove against the employee is of such a character that he would not be regarded as worthy of employment which may in certain circumstances be liable to be called misconduct. Riotous or disorderly or indecent behaviour is such a misconduct which may impair reputation of the concer and may create resentment and unrest amongst the workers. Such act even if committed outside the premises of a concern by an employee who was off duty would ensue its consequences within the work place of the employer. The words, "on the premises of the bank" would refer not only to the place where the act is committed but may refer the place also where consequences of such an act manifests. If the act has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment then it would be a misconduct. Therefore the phrase "In the premises of the bank", used in clause 5 (c) of the Bipartite Settlement dated 10-4-2002, would denote the premises where the act was committed as well as the premises where the consequence of such an act manifests itself. Such construction would uphold the intention of the signatories and effectuate it to the fullest extent. A different construction would lead to absurd result, being contrary to the provisions of para 2, 3, 11 and 12 of the aforesaid settlement.

51. The above construction is fortified by the law by the Apex Court in Mool Chandani Electrical & Radio Industries Ltd. [1975 (4) SCC 731] wherein the court had to construe provisions of the standing orders, providing commission of any act subversive of discipline or good behaviour in the premises or precincts of the establishments as misconduct. In that case an employee of the factory was attacked and on account of that incident various other employees lodged the complaint. It was contended that it was not a misconduct since the attack did not take place inside the premises. The court ruled that the words, "within the premises" refers not only to the place where the act was committed but where consequence of such an act manifests itself. It was further held that if the act has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment, then it will be misconduct. The court announced that contrary construction would be quite unreasonable.

52. Now it would be considered as to whether punishment awarded to the claimant is harsh. The claimant was awarded punishment of dismissal from service of the bank. Disorderly or riotous or indecent bahaviour tantamount to subversive of discipline. Language used by the claimant against Ms. Nag shows lack of culture. But the gesture with which indecent language was used would show his blame-worthy conduct. Use of intemperate language against Ms. Nag and Shri Chawla who was superior in hierarchy to the claimant, besides adopting threatening posture made the act more serious. Shri Chawla was humiliated in presence of his subordinates. Feeling of jealousy shown by the claimant, presuming infidelity on the party of Ms. Nag, given meaning to the entire incident. In this eva civilization such behaviour, concering a lady colleague, is uncalled for. These aspects make it clear that the misconduct is alarming. Punishment awarded to the claimant cannot be said to shockingly disproportionate, malafide or an act of victimization by the bank. It cannot be said that the punishment is disproportionate to his misconduct. Hence punishment, awarded in the matter, does not call for any interference.

Issue No. 5

53. As punishment awarded to the claimant is found to be in consonance of his misconduct, there is no question of reinstating him in the services of the bank. The claimant is not entitled to any relief. His claim is liable to be dismissed. Hence his claim is discarded. An award is, accordingly, passed in favour of the bank against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 1/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2012 को प्राप्त हुआ था ।

[सं. एल-39025/1/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2012) of the Central Government Industrial Tribunal/ Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 1-8-2012.

[No. L-39025/1/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of an Application as per Sec. 2A(I) & (II) of the Industrial Disputes (Amendment) Act, 2010

And

In the matter of an Industrial Disputes between the Management of Bank of India and their workman, Satish Rajak, Sub Staff, Zonal Office, Patna over Management's wrongful action in terminating his services by way of imposing the punishment of compulsory retirement from the services of the Bank.

I.D. Case No. 1/2012

Parties :

The Zonal Manager, Bank of India,
Zonal Office, Chanakya Place,
R-Block, Patna-800001.

... Management.

Vs.

Sri Satish Rajak,
S/o Late Ganga Rajak, Bhola Niketan,
Jai Mahavir Colony Sandalpur,
P.S. Bahadurpur, P. O. Mahendru,
Distt. Patna.

...Workman

Present : SHRI H. M. Singh, Presiding Officer.

Appearances :

For the Employers : Sri Nishant, Manager (IR).

For the Workman : Sri B. Prasad
Authorised Representative.

State : Bihar : Industry : Bank

(Dated : 17-7-2012)

AWARD

This application has been filed by the workman under Section 2-A (I) (II) of the Industrial Disputes (Amendment) Act, 2010, for adjudication by this Hon'ble Tribunal with following Schedule :

> "Whether the action of the management of Bank of India in imposing the punishment of termination of service by way of compulsory retirement from Bank's service on Sri Satish Rajak, Peon, Zonal Office, Patna is justified? If not, what relief(s) the workman is entitled to?"

2. The case of the concerned workman, Satish Rajak is that he had been working as a Peon under Subordinate Cadre at Zonal Office, Patna. He had joined the services of the Bank on 12-3-1985. He comes from Scheduled caste category. After lapse of time there had been acute shortage of Subordinate Staff in Zonal Office, Patna. Some persons retired and promoted and no recruitment took place. There are various departments in Zonal Office and the Senior Officers used to order the workman for performing different types of duties. The officers used to sit late and they also desired late sitting of Satish Rajak without payment of extra wages after his normal working hours. The duty of the concerned workman extended from 10.15 A.M. to 5.45 P.M. and every day he was required to sit upto 7.30 P. M. without extra wages. He started demanding extra wages for late hours of working, which was frequently denied to him. The workman was all of a sudden placed under suspension from 10-12-2009 without serving a charge-sheet to him. After his suspension he used to enquire the reasons for his suspension. Thereafter on 19-7-2010 he was issued a charge-sheet with unfounded allegations and simultaneously, Enquiry Officer and Presenting Officer were appointed. While working at Zonal Office, Patna, the workman was placed under suspension by the management in a wrongful manner. The workman was never supplied a copy of the appointment letter of Disciplinary Authority. The workman met with Asstt. General Manager who was acting as Disciplinary Authority and requested him to change Sri G C. Agrawal, Enquiry Officer.

It has been submitted that the Enquiry Officer did not conduct the enquiry fairly and properly. The workman was not given proper opportunity to explain the situation. He was not issued any charge-sheet prior to suspension. The disciplinary authority issued charge-sheet and

simultaneously decided to held domestic enquiry. The Enquiry Officer did not record properly the points raised by the workman during the course of domestic enquiry. The workman submitted representation before personal hearing demanding holding of a fresh enquiry and change of the enquiry officer, but the disciplinary authority failed to pass any speaking order before conclusion of personal hearing. Before passing the final order, the alleged complainant, Dhananjay Thakur appeared before the Disciplinary Authority and submitted an affidavit thereby disclosing the fact that Satish Rajak was innocent and he was trapped wrongfully. The Disciplinary Authority did not take into consideration the above facts and without applying his mind properly passed the order dated 20-10-2011 in gross violation of the principles of natural justice.

Under such circumstances it has been prayed that the Tribunal be pleased to pass an award setting aside the impugned order dated 20-10-2011 and to direct the management to reinstate the concerned workman with all consequential benefits with retrospective effect.

3. The case of the management is that the disciplinary action was initiated against the concerned workman, Satish Rajak by the then Asstt. General Manager, Patna and Disciplinary Authority vide Charge-sheet dated 19-7-2010. After conclusion of the departmental enquiry and submission of enquiry report, the Disciplinary Authority found that the charges alleged against the workman are proved and which shows element of dishonesty and lack of integrity on his part, hence punishment of Compulsory Retirement from Bank's service was awarded to him in terms of clause 6(c) of Memorandum of Settlement dated 10-4-2002. During conciliation proceeding the workman was advised to file an appeal before the Appellate Authority. The workman filed an appeal on 21-11-2011, which was disposed of by the Appellate Authority vide order dated 1-3-2012 wherein he has confirmed the punishment passed by the Disciplinary Authority. The finding of the Enquiry Officer is based on the oral/documentary evidence produced during the course of enquiry. The affidavit submitted by Dhananjay Thakur which was submitted by the workman before passing the final order was duly considered by the Disciplinary Authority while passing the punishment order. The Disciplinary Authority has passed the punishment of Compulsory Retirement from Bank's service on the workman on the basis of enquiry findings which are logical and reasoned. The management has not violated the mandatory provisions as contained in Section 33 of the I.D. Act as alleged by the workman.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The enquiry was held to be fair and proper vide order dated 27-6-2012.

6. Main argument advanced on behalf of the concerned workman is that the concerned workman has been compulsory retired from Bank service illegally. He had joined the services of the Bank on 12-3-1985 as Peon in subordinate cadre in Zonal Office, Patna. It has also been argued that due to shortage of subordinate staff in Zonal Office, the senior officers used to sit late and they also desired late sitting of the concerned workman without extra wages upto 7.30 P.M. The actual duty hours is from 10.15 to 5.45 P. M. He was suspended by the management from 10-12-2009 and after that he was issued a charge-sheet on 19-7-2010 under unfolded allegations. As per Ext. W-2 charge-sheet was issued against the concerned workman. Regarding Charge No. 1 it has been alleged that the concerned workman demanded and accepted bribe aggregating to Rs. 5600 on various occasions from Dhananjay Thakur of sanctioning of loan by R. N. Colony Branch. But Dhananjay Thakur by filing affidavit stated that Sri Utpal Kumar Rai, Chief Manager, Bank of India, R. N. Colony Branch, Patna told him in September 2009 to make a complaint against the concerned workman, Satish Rajak (Ext. W-9). He also stated in para 7 of his affidavit that the concerned workman is innocent. He never took any money from him and he never met with him before enquiry.

Regarding Charge No. 2 as regards excess withdrawal in India Credit Card, the same was allowed by the Bank Authorities. A subordinate staff cannot resort to excess withdrawal. The Bank charges interest @ 36% p.a. on the amount of excess withdrawal. The Bank never discourages any body from excess withdrawal beyond the limit. As per guidelines of India Credit Card. the same is marked hot listed after the amount of withdrawal touches its maximum limit. In case of the concerned workman, the India Credit Card was not hot listed when the withdrawal reached the maximum permitted limit. Had the India Credit Card been hot listed, the workman would have no scope for request for excess withdrawal. When he was asked to deposit the amount, the entire amount was deposited by the workman on 26-3-2010. No question of any fraud or insubordination can be said regarding Charge No. 2 because the Bank earned interest deposited by the concerned on 26-3-2010. The statement also shows as per Ext. W-13.

Regarding Charge No. 3, Star Mortgage Loan A/c had been jointly sanctioned in the names of the concerned workman and Mrs. Sosamma T. V. in the year 2006. A sum of Rs. 2500 p.m. was to be deducted from the salary of the concerned workman. It was deducted regularly and credited in the loan account. Mrs. Sosamma T.V. had deposited a bunch of advanced cheques duly signed by her for recovery

of loan instalments. The Branch Manager failed to deposit even a single cheque for collecting Star Mortgage Loan instalments. The workman was not at fault for the lapses on the part of the Branch Manager.

When the workman was served a notice under SARFAFSI Act for depositing the loan amount within 60 days, the same was complied with. The loan amount was deposited on 31-3-2010.

It has also been argued on behalf of the workman is that he demanded changing of the Enquiry Officer but that has not been done. The Disciplinary Authority failed to issue any show cause letter to the workman prior to placing him under suspension which is against the principle of natural justice. Moreover, the complainant, Dhananjay Thankur appeared before the Disciplinary Authority and filed a copy of Affidavit (Ext. W-9) on 20-8-2011, but while acting with closed mind, the Disciplinary Authority did not take into consideration the submission of the complainant and passed the order without proper application of mind. It has also been argued that the Disciplinary Authority passed the impugned order dated 20-10-2011 in gross violation of the provisions of Section 33 of the I.D. Act, when conciliation proceeding was pending before the Asstt. Labour Commissioner (C), Patna.

It has also been argued on behalf of the workman that before imposing punishment of Compulsory Retirement, the management has not followed the CVC Circular No. 99/VGL/66 dated 28-9-2000 and Circular No. 2/01/09 dated 15-01-2009 which is violative of principles of natural justice. So, I hold that the Disciplinary Authority failed to apply his mind properly while passing the order.

8. On behalf of the management it has been argued that the concerned workman has got dispute with the Bank by taking money from Dhananjay Thakur for getting a loan sanctioned to him by R. N. Colony Branch.

There is no witness to support this allegation, when the complainant, Dhananjay Thankur has got no complaint against the concerned workman. So no charge is proved against the concerned workman in this regard.

Another argument advanced on behalf of the management is that he had taken loan beyond limit and resulting to excess withdrawal from loan account. As regards credit card facility the Bank charges interest @ 36% p.a. on the excess withdrawal.

It shows that the Bank is not discouraging withdrawal beyond the limit to get more interest and that cannot be in any way be misconduct on the part of the concerned workman. The joint loan sanctioned in favour of the concerned workman and his wife, it was deducted regularly and credited to the loan account. When notice was served on the workman for depositing the loan amount within 60 days, the same was deposited on 31-3-2010.

9. Considering the facts and circumstances stated above, I come to the conclusion that the action of the management of Bank of India in imposing the punishment of termination of service by way of Compulsory Retirement from Bank's service on Sri Satish Rajak, Peon, Zonal Office, Patna, is not justified. Accordingly, I set aside the Order of Compulsory Retirement dated 20-11-2011 and direct the management to reinstate the concerned workman with 50% back wages and other consequential benefits. The management is directed to implement the Award within 30 days from the date of publication of the Award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 21/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-2012 को प्राप्त हुआ था ।

[सं. एल-12012/85/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S.O. 2888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2007) of the Central Government Industrial Tribunal/ Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 6-8-2012.

[No. L-12012/85/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, AT DHANBAD.

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1)(d) of the I.D. Act, 1947.

Reference No. 21 of 2007

Parties : Employers in relation to the management of Central Bank of India and their workman.

Appearances :

On behalf of the workman :	Mr. B. Prasad, Rep. of the workman
On behalf of the employer :	Mr. D. K. Srivastava/ Sri A. K. Mishra, Management's Reps.
State : Bihar	Industry : Banking

Dhanbad, Dated 19th June, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/85/06-IR (B-II) dated 01-05-07.

SCHEDULE

"Whether the action of the management of Central Bank of India, Zonal Office, Muzaffarpur in terminating the service of Shri Akhilesh Kumar Jha, Casual worker and not paying the terminal benefits and not reinstating into the service in a regular post is legal and or justified? If not, what relief Shri Akhilesh Kumar Jha is entitled to ?"

2. The case of the workman as stated by the workman is that workman Akhilesh Kumar Jha was orally appointed by the Management of Central Bank of India, Devapur Branch Distt. : East Champaran to discharge the duties of a Peon from 1-12-1997. He worked there upto 8-8-1998 discharging his duties from 10 a.m. to 6 p.m. and regularly and uninterruptedly by opening and closing of the Bank's dak, taking out and putting the Ledgers in the Almirah, posting of Mails, distribution of mails by Peon Book, carrying taken books, Scroll Register from Cash Deptt. to Account Deptt. vice versa and serving water, tea to the staff and customers of the Bank, all that identical to the job of a permanent staff of the bank on the instruction of the Branch Manager. He was being paid his wages weekly through payment vouchers.

But he was informed on the evening of 8th August, 1998 that his services stood terminated w.e.f. 9-8-1998 without any prior manadatory notice or payment notice u/s 25F of the I.D. Act., though after termination his name was forwarded by the Branch Manager for reinstatement and regularisation as per the Bank Circular of the Regional Office calling for the names the workmen who worked for more than 240 days. At last the failure in conciliation proceeding adamentacy of the management before the Conciliation Officer despite his best efforts for it resulted in the reference for the adjudication. The action of the Management in terminating his service unconsidering for his regularisation is illegal and unjustified in view of violation of the mandatory provision of law as well as that of the principle of 'Equal pay for Equal work' under Article 39(4) of the Indian Constitution, and unfair labour practice under Schedule V to the I.D. Act. The workman in the mid stream of life has become over aged disqualified for any employment anywhere. He is entitled to reinstatement, regularisation of service as a Peon, payment of due wages for the period of his working and any order due relief.

3. With specific denials, further case of the workman in his rejoinder without repetitions is that the non-issuance of appointment letter by the Management is its fault on status of the workman as a Peon after exploiting his services. At his approach to different level of the Management, the Bank's formulated scheme for absorption/regularisation of workmen concerned was in accordance with the approach papers of the Labour Ministry on various occasions. Several persons under the Scheme were permanently absorbed in the Bank services as a Peon. Recently the services of over 20 personnel drivers attached with the Executives of the Bank were regularised by the Bank. So the workman is entitled to his reinstatement in a regular post of a Peon retrospectively.

4. Whereas categorically denying the allegations of the Union challenging its maintainability, the pleaded case of the Bank Management is that no employer-employee relationship exists between the person concerned and the Bank as he was never appointed by the Competent Authority on any permanent post as per the procedure/rules prescribed for employment in the services of the Central Bank. None including the Branch Manager has power to do so. He was used to be daily intermittently engaged for the job of purely casual nature in exigency ending on each day. Admittedly neither his engagement from 1-2-1991 to 08-08-1998 is twelve calendar months nor he ever rendered continuous service, so he is not entitled to any kind of terminal benefits, though his due wages was paid to him for the work of casual nature. The dispute has been unjustificably raised after long about seven years. A person engage in contravention of the Rules and procedure of recruitment to a permanent post can not claim for permanent employment on regularisation in a permanent post. He was simply not engaged after 08-08-1998 for casual jobs, as he was not required. The instant dispute is a wild attempt to enter into the permanent employment through back door by litigation. So the person is not entitle to any relief.

FINDING WITH REASONING

5. In this case, WW1 Akhilash Kumar Jha, the workman for his own sake and MW 1 Ravi Verma, Asstt. Manager, Branch Office, Central Bank of India, Chakia, Motihari for the management have been examined.

Proving the photocopies of the Information dtd. 20-09-2001 furnished by the Branch Manager to the

workman under the R. T.I. Act, of the letter dtd. 20-09-2001 of the Branch Manager, Central Bank of India, Devopur and of the certificate dtd. 27-07-1999 of the aforesaid Branch Manager about the workman as a casual worker as Ext. 1, 1/ and 2 respectively, the workman (WW1) by his evidence has stated to have worked continously as a permanent peon at the direction of the Branch Manager concerned from 1-12-97 to 08-08-1998 from 10 a.m. to 6 p.m. @ daily wages Rs. 30 and then at Rs. 35 by performing the work for more than 240 days in the calendar year, but he was removed from his service without any notice or renumeration from his job by the management so he claims for his reinstatement in his service on the regular post. Though the workman has admitted not to have got any appointment letter from the management to serve as a Peon of the Branch concerned nor any written notice for an interview. The workman could not tell the names other two persons whose names were sponsored from the Employment Exchange for interview nor its date he had faced for it.

6. Whereas the evidence of MWI Ravi Verma, the Asstt. Manager, Branch Office, Central Bank of India, Chakia, Motihari (Bihar) is that a casual labour is temporarily engaged by the management in exigency, for which there is not any advertisement; the name of a casual labour does not come under the Muster Roll or Pay Roll of the Bank. This management witness (MWI) has affirmed that petitioner/workman Akhilesh Kumar Jha was paid his wages as a casual labour through vouchers for his work on particular days only, though he can not recall the period of the claim of the workman; that casual labour is engaged for cleaning in absence of any staff on leave, though there was no shortage of peon at the branch office at the relevant time, further statement of the management witness Ravi Verma, (MW I) is that the workman was paid his wages usually after five or six days a week through debit vouchers.

7. Mr. B. Prasad, the Representative of the workman relying upon to authorities : Harjinder Singh Vs. Punjab State Warehousing Corp. 2010 (I) SCR 591 (DB) & Management of Best & Cromption Engineering Ltd. Chennai Vs. A. M. Sekar and another reported in 2012-I-LLJ (SB) has submitted that admittedly the workman was continuously working for 240 days in the aforesaid period, for which he was being paid through vouchers but his service was terminated in violation of mandatory provision of Sec. 25 F of the I.D. Act., 1947.

8. Having gone through both the aforesaid Rulings, I find the former Ruling relates to an Appellant who was employed in the services of Punjab State Warehousing Corp. as work charge Motor Mate, w.e.f. 5-3-1986; after seven months he was appointed as Work Munshi in specified scale for three months, and again for three months which though ended on 4-5-1987 yet the Appellant was continued in service till 5-7-1988, the date on which the Managing Director of the Corporation issued one month notice seeking to terminate his service by way of retrenchment . The Learned P. O. of the Labour Court concerned awarded him for his reinstatement which was affirmed by the Apex Court. The latter Ruling, which is of the Hon'ble High Court of Madras, relates to termination of service of workman not fulfilling condition precedent under Sec. 25-N (1)(b) of the I.D. Act., 1947—Award of Labour Court holding them entitled to reinstatement with back wages and continuity of service upheld as proper and the writ petition challenging the award were dismissed.

9. In the instant case, on the perusal of the alleged documentary proof of as to the alleged continuity in the service of the workman, I find the RTI information dtd. 20-09-2001 under the signature of Branch Manager concerned (Ext. W.1) shows total 251 days from 1-12-1997 to 08-08-1998 in respect of the workman Akhilash Kumar Jha as a casual labour as also according to the Branch Manager's letter dtd. 20-09-2001 addressed to the Regional Office, Motihari. Aforesaid information report was the enclosure of the letter. The same Branch Manager appears to have issued the certificate to that effect dtd. 27-07-1999 earlier that Mr. Jha to have completed 240 days as casual labour as per the dates mentioned threin for the aforesaid period of his working, i.e., 8 months and 08 days from 1-12- 1997 to 08-08-1998 but not a single debit voucher of 35 in number has been produced as a proof thereof. None of the aforesaid three documents of the workman is a substantive proof of his continuous working for the period for the reason of his vagueness about his actual working days, because the workman has failed to plead or proof whether the holidays or Sundays were also paid or not. Moreover no wages are paid for holidays for "Idulfittra" or for Sundays in each month to purely a temporarily workman like the present petitioner. But the instant case the total working alleged dates include nine days holidays for Id-ul-fitter which does not specify from which date upto what date it was. Apart from it, daily wagers are paid like piece rated worker for his daily wager for works such as conveyance charges permissible under the Banking services in addition to his actual working in place of an employee on holidays or for other work. Under these circumstances of vagueness, I find it that the petitioner who seeks justice has not come with the clean hands with his case before this Tribunal. In lack of the proof for the payment of any holidays, the workman's total working days falls short of 240 days in twelve calendar months; hence the workman can not be deemed to be in continuous service for more than 240 days for alleged period under the Bank Management concerned.

10. So far as the applicability of Sec. 25 F or 25-N (1)(b) though under different chapter i.e. chapters V-A and V-B, yet each of which mandatorily dictates the existence of a workman in continuous service for not less than one year under an employer, but in the instant case

the petitioner/workman purely a temporary one has never been in continuous service for the requisite period. Therefore the compliance of notice under Sec. 25 F is not required nor applicable to the present case.

11. In the backdrop of the present case under adjudication, none of the aforesaid authorities holds good with it because their ratio decidends are different from the present case.

Considering the aforesaid discussed facts and laws, I find and hold that in view of the nature of the case of the petitioner/casual workman, the issue whether the action of the management of the Central Bank of India, Zonal Office, Muzzaffarpur in terminating the service of Akhilash Kumar Jha, casual worker and not paying the terminal benefits and not reinstating into the service on a regular post is legal and justified does not occasion to arise in any way of Laws. So Sri Akhilash Kumar Jha is not entitled to any relief whatsoever.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पवन हंस हेलिकाप्टर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं .1, मुम्बई के पंचाट (आई डी संख्या सीजीआईटी-1/29 आफ 2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-08-2012 को प्राप्त हुआ था ।

[सं. एल-11012/6/2011-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S. O. 2889.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-1/29 of 2011 of the Central Govt. Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Pawan Hans Helicopters Ltd. and their workmen, received by the Central Government on 22-08-2012.

[No. L-11012/6/2011-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, MUMBAI

Present : Justice G. S. Sarraf, Presiding Officer

Reference No. CGIT-1/29 of 2011

Parties : Employers in relation to the management of Pawan Hans Helicopters Ltd.,

And

Their workman

Appearances :

For the Management : Smt. Pooja Kulkarni, Adv.

State : Maharashtra

Mumbai, dated the 24th day of July, 2012.

ORDER

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows :

> "Whether the action of the management of M/s. Pawan Hans Helicopters Ltd., in awarding the major punishment of stoppage of increment for the offence of negligence of duty by which delay in promotion for one year, is legal and just ? To what relief the workman concerned is entitled to ?"

2. The parties between whom the dispute has arisen or apprehended in the view of the Government must be indicated either individually or collectively with reasonable clearness. This reference does not specify the name of the workman against whom the punishment of stoppage of increment has been awarded. The reference thus suffers from material defect and it is held to be vague.

3. The Reference, is therefore, returned to the Government of India and it stands disposed of accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एयरलाइन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं .1, नई दिल्ली के पंचाट (आई डी संख्या 189/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-08-2012 को प्राप्त हुआ था ।

[सं. एल-11012/61/1999-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S. O. 2890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 189/2011) of the Central Govt. Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Indian Airlines Ltd. and their workmen, received by the Central Government on 22-08-2012.

[No. L-11012/61/1999-IR (CM-I)]

AJEET KUMAR, Section Officer

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 189/2011

Shri Sauraj Singh,
R/o D-723, Amar Colony,
East Gokalpur,
New Delhi-11 0094 ...Workman

Versus

The General Manager (Personnel),
Indian Airlines Ltd.,
Palam Airport,
New Delhi. . . .Management

AWARD

In the year 1988-89 erstwhile Indian Airlines Ltd., (in short-the Airlines) issued notification to fill certain vacancies on regular basis in the categories of Helper . (Engineering), Helper (Stores) and Helper (Commercial) by inviting applications for amongst public at large. Requisitions were also sent to employment exchanges under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Applications were called from such persons who had worked with the Airlines on casual/ temporary basis for a minimum of 90 days during the period of 12 completed months in last three years. On receipt of the applications, selection process was undertaken. Applicants were interviewed and those who were found fit were-empanelled, according to merit. Panel of over 200 candidates was approved by the competent authority on 20-11-1990. Empanelled candidates were informed that their appointment was subject to regular vacancies. Candidates only up to serial No. 88 of the panel could be offered regular appointment in order of merit against regular vacancies. Panel lapsed on 15-7-1994 and no further appointment on regular basis was made out of the said panel.

2. A group of casual workers, who had been empanelled, had filed Writ Petition (C) being No. 4113 of 1994 before High Court of Delhi seeking various reliefs including relief of regularization in service. On 7-12-1995, relying on the decision in Piara Singh [(1992 (4) SCC 118)] the High Court passed interim order directing the Airlines to prepare a panel and to engage casual labour within the said panel as per their exigencies. For sake of convenience the order passed by the High Court is reproduced thus:-

"CM-6235/1995"

"Guide lines for dealing with casual workers have already been elabourately given by the Supreme Court in well known case of "Piara Singh" to some extent modified by certain guidelines given in the Horticulture case. We have gone through the policy of the respondents placed on record. We make it clear that there cannot be fixed period for existing a particular panel of casual workers because the question of panel replacing would only arise in respect of regular vacancies for which the panel is prepared. As far as casual workers are concerned, in order to curb arbitrary method being adopted by public undertaking for engaging casual workers on their whims and choice and in order to avoid any favouritism with public employment, the Supreme Court has already made it clear that a causal worker engaged by a public undertaking must continue to work till regular posts are filled in by following the recruitment rules. But in case there is no work available for casual workers, principle of last to come, first to go has to be followed and the casual workers who have been working and for whom there is no work left the public undertaking concerned has to prepare a panel in which names of such casual workers are to be included in order of their seniority and whenever vacancy arises for engaging casual worker, the authority must first look to job in accordance with seniority in the panel of casual workers. But in fcase any emergency arises the authority can engage any worker without considering seniority for temporary emergent work but normally casual workers must be engaged from the panel, if they are eligible for the post in accordance with recruitment rules on the basis of their seniority in the particular panel. This application is thus disposed of."

C.W. 4113 & CM 6235/1994 :

Adjourned to 26-2-1996. Counsel for respondents may place on record panel of casual workers, if already prepared and if not prepared the same be prepared on the basis of the above guidelines".

3. In compliance of the said directions, the Airlines prepared a panel popularly known as panel of 1995. Airlines engaged casual workers, whose names appeared in the panel, so prepared on the direction of High Court of Delhi. Ultimately the Writ Petition came to be disposed of vide order dated 7-5-1997. While disposing of the Wirt Petition the High Court commanded that the Airlines shall take the select panel prepared and approved on 20-11-1990 as the base and will offer employment on ad-hoc /casual basis to the petitioners, according to their merit in the select panel. All such petitioners whose names appear in the selection panel and are interested to work on casual basis or on ad-hoc basis will report to the respondents within a period of 15 days.

4. Pursuant to the directions given by the High Court, the Airlines disengaged casual workers whose names did not find place in the select panel. Being aggrieved by that act some of the workers, whose name were there on the

panel of 1995, filed a Writ Petition being CWP No. 2623/1997 before High Court of Delhi. It was emphasized by the High Court that the Airlines shall give an opportunity of being deployed to a person whose name had appeared in the select panel and he would be considered for regular appointment when the Airlines would like to fill up regular vacancies and in case he gets age barred for selection for regular appointment, he be given relaxation in the age limit.

5. On 12-11-2002 the Airlines issued an employment notification addressed to employment exchanges seeking names of casual labours to prepare a new panel for casual employment. It made the casual labours, whose names appeared in panel of 1995, to raise a demand to engage them against the job of casual labours. When the said demand was not conceded to, an industrial dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government made a reference of the dispute for adjudication to this Tribunal, vide order No. L-11012/61/99-IR (C-I) New Delhi, dated 2-12-99 with following terms.

"क्या इंडियन एअरलाइंस के प्रबंधतंत्र द्वारा श्री सोराज सिंह को उनकी छंटनी के समय ओ.वि.अधि. की धारा 25 एफ के अंतर्गत लाभ न दिया जाना न्यायोचित है ? यदि नहीं तो कर्मकार किस राहत के पात्र हैं?"

6. Claim statement was filed by Shri Shiv Raj Singh pleading therein that he was serving with the Airlines as drive since 20-7-1996 honestly and sincerely. His wages were Rs. 3300.00 P.M. Appointment letter, casual leaves and overtime wages were not, paid by the Authority to the claimant. However, bonus was paid to him. When he made demand for leave and overtime the Airlines felt annoyed. His earned wages and overtime wages for the month of September, 1998 were not paid despite demand. His services were dispensed with on 10-10-1998, without any rhyme and reason. No show cause notice was served upon him. No notice or wages in lieu thereof was give. Retrenchment compensation was also not paid to him. His juniors were still working with the Airlines. He rendered continuous service with the Airlines for more than 240 days in a calendar year. Termination of his services amounts to retrenchment. The Airlines violated the provisions of Section 25F of the Industrial Disputes Acts 1947 (in short the Act).

7. A notice of demand was sent on his behalf on 20-10-1998. The Airlines had not made any response to the demand. He raised an industrial dispute before the Conciliation Officer on 14-1-1999. The Airlines filed its written statement before the Conciliation Officer and projected there in that he was engaged for 95 days by the Airlines in the year 1993-94. He refuted those claims and projects that he continuously worked with the Airlines for more than 240 days in 1993-94. He asserts that he is unemployed since the date of termination of his services. He claims that termination of his services being violative of the provisions of Section 25F of the Act is illegal. He claims that he may be reinstated in service with continue and full back wages. Claim was resisted by the Airlines pleading that the claimant was working as a casual driver on daily rate basis. He was empanelled for the post of casual daily rated driver in view of the interim order dated 17-12-1995 passed by the High Court of Delhi. The interim order was subsequently held to be arbitrary when High Court disposed of Writ Petition No. 4113/94, vide its order dated 9-5-1997, as such the Airlines had no basis to disengage the claimant along with other casual daily rated workers. Since his disengagement was pursuant to the orders of the High Court, action of the Airlines is not violative of any statutory provision. The claimant has concealed material facts in the written statement and as such has no locus standi to raise present dispute. When the claimant was engaged pursuant to the interim order dated 7-12-1995 and his services were dispensed with in consonance with the order dated 9-5-1997, there is no question of computation of 245 days of continuous service. Dues of the claimant were paid from time to time. He was given overtime wages and other benefits as per his entitlement. The claimant was subjected to a eligibility test for his empanelment on regular basis but he failed to qualify that test. After termination of his services the claimant is gainfully employed. The Airlines pleads that the claimant had no-right of reinstatement and his claim statement deserves dismissal being devoid of merits.

8. In the rejoinder the claimant reiterates the facts. He projects that the Airlines is attempting to misuse the order passed by the High Court on 9-5-1997. He presents that it does not lie in the mouth of the Airlines to assert that his services were engaged in consonance with the order dated 7-12-1995 and were dispensed in compliance with the order dated 9-5-1997 passed by High Court of Delhi.

9. On pleading of the parties the following issues were settled by my Ld. Predecessors :—

(i) Whether the management was justifies to terminate the workman of the judgment dated 9-5-1997 passed in CWP No. 4113/94 by High Court of Delhi?

(ii) As per terms of reference.

10. Vide order No. Z-22019/6/2007-IR (C-II) New Delhi dated 11-2-1998 the appropriate Government transferred this case to Central Government Industrial Tribunal No. 2 for a disposal.

'11. The claimant has examined himself in support of his claim. Shri Vijay Kumar, Senior Manager, entered the witness box on behalf of the Airlines. No other witness was examined by either of the parties.

12. Vide order No. Z-22019/6/2007-IR (C-II) dated 30-3-2011 the case was, retransferred to this Tribunal by the appropriate Government for adjudication.

13. Arguments were advanced by the parties. Shri R. L. Sharma, authorized representative, advanced arguments on behalf of the claimant. Ms. Poonam Das, authorized representative, presented facts on behalf of the Airlines. Written submissions were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the Controversy are as follows :—

ISSUE No. 1 & 2.

14. In his affidavit Ex WW1/A tendered as evidence, the claimant swears that he was engaged by the Airlines as a driver w.e.f. 20-7-1996. His salary was Rs. 3300.00 p.m. He rendered more than 240 continuous service. During the course of his employment he worked hard to the best of his ability. He was removed from service on 9-10-1998. No notice or pay in lieu thereof and retrenchment compensation was paid to him. His salary for the month of September, 1998 and over-time wages for that month were not paid. No show-cause notice or charge-sheet was ever served upon him. Termination of his services is illegal and violative of the provisions of Section 25F of the Act. During the course of his cross-examination he concedes that he worked as a casual labor with the Airlines. He showed his inability to tell as two whether his name was empanelled by the Airlines. He also claimed ignorance in respect of filing of a Writ Petition before the High Court of Delhi.

15. Shri Vijay Kumar Sood in his affidavit Ex. MW1/A tendered as evidence in the year 1993-94, proved that Wirt Petitions were filed before the High Court by casual workers for their regularization. In Wirt Petition No. 4113/94 an interim order was passed on 7-12-1995 directing the Airlines to prepare a panel for engaging casuals on daily rate basis in different categories from amongst the casuals who had worked with the Airlines earlier. Pursuant to the directions given by the High Court the Airlines prepared a panel of workers, who had worked during the year 1993-94 and 1994-95. Since authentic records prior to that period were not available, after confirmation of panels in different categories like Helper (Engineering), Helper (Commercial), Helper (Motor Transport), the Airlines started engaging casuals out of that panel. The claimant was engaged as a driver on daily rate basis, pursuant to the order dated 7-12-1995 referred above. Writ petition No. 4113/94 besides other writ petitions was disposed of vide Order dated 9-5-1997. It was held by the High Court that cut of date of 1993 for formulating the panel was arbitrary, and authentic records were available with it. Airlines were directed to engage casuals for its requirement out of the select panel prepared and approved on 12-11-1990. The Airlines had to disengage the casual employee in pursuance of interim order dated 7-12-1995. He details that a number of Writ Petitions were file in 1998. Writ Petition No. 2644/98 was disposed of vide order dated 21-8-1998 wherein it was commanded that direction given in order dated 9-5-2007 should be followed.

16. Shri Vijay Kumar went on to detail that in the year 1996 all regular drivers were interviewed for recruitment by the Airlines for the posts which were lying vacant. Employment notification dated 7-3-1996 was issued/Casual drivers who were on the panel prepared in persuade of the interim order passed in Writ Petition No. 4117/1994 were also given an opportunity to apply in response to the said notification subject to their fulfilling eligibility criteria. He failed to qualify that test. Assessment of his test is annexed as Ex. MW1/3. Services of the claimant were dispensed with on 10-10-1998 in pursuance to the order dated 9-5-1997 passed by High Court of Delhi. His disengagement was in consonance with the order of the High Court, hence cannot be- termed as illegal. The action of the Airlines is not violative of the provisions of Section 25 of the Act. During the course of cross-examination he projects that the claimant had worked for 186 days from 1993 to 1995. He further admits that in 1990 a panel was prepared for regularization of services of the casual workers. He also admits that from 20-7-1996 to 9-10-1998 the claimant had continuously worked with the Airlines.

17. When facts testified by the claimant and Shri Vijay Kumar were appreciated it came to light that facts unfolded by Shri Sood, to the effect that the claimant was engaged in pursuance of interim order dated 7-12-95, were not dispelled by way of cross-examination. Unassailed facts are taken as true. Thus it is clear that engagement of the claimant pursuant to order dated 7-12-95, termination of his service on 9-10-98 and disposal of writ petition by the High Court on 9-5-97 are not matters of dispute.

18. Out of the record it emerges that the Airlines engages casual employees in exigencies of work or when sporadic absentees of regular employees do occur. Such engagement of casual employees- was done even prior to 1988-89. In 1988-89 notifications were issued by the Airlines for filling of certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores) and Helper (Commercial) etc. Requisition was also made to the employment exchanges in accordance with the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act 1959. A separate notification was issued calling upon applicaitons from persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last 3 years. Applications, so received, were processed and applicants were interviewed. A panel of 200 persons was prepared and approved on 20-11-1990, for appointment against regular vacancies, subject to availability of post. It was made clear to empanelled candidates that their appointment would be made as and when vacancies would be available. Out of 200 candidates persons whose names appeared up to serial No. 88 of the panel could be offered

regular appointment in order of merit against available regular vacancies. The panel lapsed on 15-7-1994 and no further appointment on regular basis could be made out of the panel.

19. The Airlines engaged casuals persons whose names were not there in the select list. Various Wirt Petitions were filed before the High Court of Delhi by casual workers, seeking their regularization in the service of the Airlines. In Wirt Petition CWP No. 4113/1994 an ad-interim order was passed on 7-12-1995 directing the Airlines to prepare panel of casual workers. In pursuance of the directions, so given, a panel of casual workers was prepared who had been engaged by the Airlines from 1-1-1993 to 31-12-1995. Out of that panel of casual workers the claimants were engaged in compliance of the orders passed by the High Court. Since posts could not to be filled on regular basis, the Airlines started deploying persons on casual basis. Thus it is emerging over the record that there were 3 types of casual employees namely, (i) whose names appear in the select list of 1990, (ii) who were engaged after 1990 but their names do not find place in 1995 panel, and (iii) casuals whose names do appear in 1995 panel.

20. While disposing of the Writ Petition, the High Court in its order dated 9-5-1997 emphasized that the Airlines had to engage casuals, whose names, appeared in the select panel. The observations made by the High Court are reproduced thus :-

"It is not in dispute that select panel had been prepared. Pending appointment on regular basis, the respondent in order to cope with its work started deploying on ad-hoc basis casual persons only from the select panel. Petitioners are those persons. Respondent's case is that select panel has now come to an end. The mere fact that the validity of the select panel, which had been prepared for the regular employment had come to an end, could not have absorbed the respondent to ignore the said panel and then start resorting to engage persons from outside the said panel, ignoring the claim of the persons, who had been selected and included in the select panel, who were being engaged on casual basis. In case respondent had as of necessity resorted to deploying persons either on ad-hoc basis or on casual basis for carrying on its day to day work, may be due to exigencies of work or because of absenteeism, respondent ought not to have replaced persons engaged earlier by deploying persons from outside the panel but ought to have deployed, from out of the panel since the respondent had stared deploying them initially from the select panel. Petitioners before this court are those whose names were included in the panel. The stand taken by the respondent in the two additional affidavits of fixing artificial cut off date of 1-1-1993 on the plea that authentic record prior thereto was not available is not justifiable. Authentic record in the shape of select panel is available with the respondent. Since it is not disputed that the petitioners were brought on the select panel, they ought to have been preferred while offering Employment or deploying any person from outside the select panel.

21. The High Court further noted that the Airlines shall replace a person whose name appeared in the select list possibly by a regular employee employed on regular basis and not by any other casual worker. The command given by the High Court is extracted thus:-

> "In view of the above while holding the respondent's action to be arbitrary in the matter of preparation of the panel of casuals in the category of Helper(Engineering), Helper (Commercial), Helper (Motor Transport), Helper (stores), Helper (Drivers), Helper (Canteen), Helper "(Catering), Safai Wallas, Peon etc., respondents are directed to (i) engage on casual basis for its requirements either for the purpose of ad-hoc employment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20-11-1990. Only when after due intimation the person will decline to work on casual basis that the respondents will be entitled to engage persons from outside the panel. So lqng such of the persons whose names appear in the select panel, are prepared to work on casual basis, till appointments are made on regular basis, the respondents will not discontinue them. Persons, whose names appear in the select panel, if deployed on casual basis or ad-hoc basis will be replaced only by regular employees on regular basis and not by any other casual worker. Taking the select panel as the basis the respondents will offer employment on ad-hoc/casual basis to the petitioners according to their merit in the select panel. All such petitioners whose names appear in the select panel are interested to work on casual basis or on ad-hoc basis will report to the respondent within a period of 15 days from today. The respondents will continue to engage them till posts are filled on the regular basis. With these directions the Writ Petitions stand disposed off."

22. As unfolded by Shri Vijay Kumar Sood and not dispelled by the claimant by way of cross-examination the claimant was engaged by the Airlines in pursuance of interim order dated 7-12-1995 passed by the High Court. The said interim order lost its efficacy and force when Writ Petition was disposed of on 9-5-1997. As pointed out above, the Airlines was commanded to engage only the persons, whose names appear in the select panel. Admittedly the name of the claimant does not appear in the select panel. Thus it is evident that the claimant lost his claim, when the High Court commanded the Airlines not to engage casuals from 1995 panel. The claimant cannot agitate continuance of his engagement.

23. Question, which is to be addressed by the Tribunal, is as to whether disengagtement of the claimant amount to retrenchment? For an answer definition of the word "retrenchment" is to be considered. Section 2 (oo) of the Act defines the term as follows :

"(oo) retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

24. As referred above, definiton of word "retrenchment" consists of following four requirement :-

(a) Termination of services of workman

(b) By the employer

(c) For any reason whatsoever, and

(d) Otherwise than as a punishment inflicted by way of disciplinary action.

25. When the Act provides dictionary for the word used, in that situation it is essential that the Tribunal cannot look into the dictionary first for interpretation of the word used in the Act. Therefore, taking into account the definition of the term "retrenchment" given in- the Act, the Tribunal is concerned to appreciate whether termination of the services of the claimant was by an act of the employer. On this count Shri Bhasin argued that claimant was disengaged on the command of the High Court, given in its judgment dated 9-5-1997. As pointed out above the High Court commanded the Airlines to offer employment on adhoc/casual basis to-the petitioners whose names do appear in the select panel, according to their merit. All such persons, whose names appear in the select panel and are interested to work on casual basis or on ad-hoc basis were required to report to Airlines within a period of 15 days from the date of the order. Those persons were to be continued till posts were filled on regular basis. Directions, so given, make it clear that by the end of May, 1997 persons whose names appear in the select panel were required to join with the Airlines. On the other hand, the Airlines ought to have discontinued the services of the claimants herein by the end of May, 1997. However it is not a matter of dispute that services of the claimant herein was dispensed with on 10-10-1998.

26. As per facts projected by the claimant he was engaged by the Airlines on 20-07-1996. His services were disengaged on 9-10-98. It does not lie in the mouth of the Airlines that service of Sauraj Singh was done away in compliance of the order passed by the High Court on 9-5-1997. These startling facts make it clear that disengagement of the claimant was not in pursuance of the orders passed by the High Court of Delhi. On the other hand the said order was used as a tool by the Airlines to terminate services of the claimant.

27. Now it would be considered as to whether the claimant rendered continuous service for more than 240 days in preceding 12 month from respective dates of termination of their services. A workman would be deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. "Continuous Service" has been defined by section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz.(i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six, months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calandar months immediately preceding the retrenchment.

28. At the cost of repetition, it is said that claimant was retrenched on 9-10-98. He was was engaged by the Airlines on 20-7-1996. The Airlines nowhere project that his service was interrupte for any reasons other than

those detailed in sub-section (1) of Section 25 B of the Act. The Airlines nowhere disputes that Sauraj Singh worked with the Airlines from 20-7-1996 to 10-10-1998. Therefore, it is emerging over the record that he has rendered continuous service of 240 days and more in each calendar year. Consequently it has been established on the record that the claimant has rendered continuous service of one year in each calendar year. The claimant could satisfy that service rendered by him answers the definition of "continuous service" as defined in Section 25-B of the Act.

29. The claimant had rendered continuous service of a year or more, as contemplated by Section 25-B of the Act. His service was dispensed with on 9-10-98. He presents that retrenchment compensation was not paid to him, which fact was not dispelled by the Airlines. The Airlines was under an obligation to pay him compensation for retrenchment at the time of his retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists case [1964 (1) LLJ 351], Adaishwar Laal (1970 Lab. I.C. 936) AND B. M. Gupta [1979 (1) LLJ 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment. As retrenchment compensation was not paid to the claimant, consequently action of the management falls within the mischief of Section 25-F of the Act.

30. These facts make me to announce that service of the claimant was dispensed with by the Airlines in violation of the provisions of Section 25F of the Act. However, it is not the case of the claimant that he was engaged in consonance with the rules of recruitment. The claimant does not project that his name was sent by the employment exchange for the post of casual labour. Therefore, it is emerging over the record that engagement of the claimant by the Airlines was dehors the rules. Admittedly he was engaged out of the panel prepared by the Airlines in pursuance of command given by the High Court:

31. In Uma Devi [2006 (4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the Court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or ad hoc capacity for a fairly long spell. The Court ruled thus :

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its as to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh (supra) is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

32. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was ruled thus.

"The appointment to any post under the State can only be made after a prope advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution" .

33. In P. Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Artical 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. Relying the above law, it is concluded that the claimants have no right of continuance on casual jobs in which they were engaged dehors the rules. Hence no order for re-instatement of their services can be made, since it would amount to allow them to continue on a job where they were not law fully recruited.

34. When the claimant is not to be reinstated in service, in such a situation the Tribunal can award compensation to him. For award of compensation to the claimants parameters for fixation of amount of compensation are to be noticed. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of compensation, which may be awarded to the claimant. In S.S.Shetty [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words :

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future. . . In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitute and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

35. A Divisional Bench of the Patna High Court in B.Choudhary (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi (1989 Lab. I.C.1887).

36. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K.Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M. K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh [1993 Lab. I.C.44] the court directed payment of Rs. 75000 in view of reinstatement with back wages. In Naval Kishor [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (ii) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab. I.C. 107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C. 1650) a compensation of Rs. 2.50 lac, was awarded in lieu of reinstatement.

37. In view of the facts that the claimant has worked with the Airlines continuously for a period of more than 240 days in a calendar year preceding the date of his disengagement, the period for which he has worked and legal impediment before the Airlines to continue with his engagement as well as his young age, I am of the view that the claimant shall get a compensation of Rs. 40,000. The amount of compensation shall be paid within thirty days of the date, when the award becomes enforceable. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated 27-7-2012

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्रिटिश एयरवेज़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 74/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-8-2012 को प्राप्त हुआ था ।

[सं. एल-11012/10/2008-आई आर (सीएम-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd August, 2012

S. O. 2891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74 / 2009) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of M/s. British Airways and their workmen, received by the Central Government on 22-8-2012.

[No. L-11012/10/2008-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 11th July, 2012

Present : A. N. Janardanan, Presiding Officer

Industrial Dispute No. 74/2009

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. British Airways and their Workman.]

BETWEEN

The Secretary
Chennai Airport Contract Workers Union
No. 13, 1st Street Balaji Nagar, Anakaputhur
Chennai-600070 ...1st Petitioner Union

Vs.

M/s British Airways
Anna International Terminal
Madras Airport, Meenambakkam
Chennai-600027 ... 2nd Party/Respondent

Appearance :

For the 1st Party/Petitioner : M/s. Balan Haridas
Kamatchi Sundaresan,
Advocates

For the 2nd Party/Respondent : M/s. Kochhar & Co.,
Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-11012/10/2008-IR (CM-I) dated 17-08-2009 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of M/s British Airways, Chennai in dismissing the services of Shri S. Babu, w.e.f 02-06-2006 is justified and legal? To what relief the workman concerned is entitled?"

2. After the receipt of the Industrial Dispute, this Tribunal has numbered it as ID No. 74/2009 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim, Counter and Reply Statements as the case may be.

3. The averments in the Claim Statement briefly read as follows:

The concerned workman, a member of the Petitioner Union whose cause is espoused herein was appointed by the Respondent as a Traffic Assistant on 01-04-1996, initially paid with a monthly salary of Rs. 2,670. He was assigned work in Anna International Airport and was doing the work of arranging the counters of the Respondent Airline in the Airport, manually assisting in clearance of baggage, receiving the meteorological folder to the air traffic control office, helping the counter staff and all other errand jobs. He was also termed to be an Office Assistant and in substance doing the work of a Peon. Though his working hours were from 9.30 AM to 5.30 PM he worked for more than 14 hours a day. He was assigned work by the Airport Manager and Traffic Assistants. He was directly working for the Respondent continuously. However he was paid only meagre wages and not any benefits. Respondent with ulterior motive termed him to be a contract employee from the end of 2005. He was assigned work and also paid wages only by the Respondent. His work was supervised only by the Respondent. Records relating to his attendance, OT were maintained by the Respondent only. The so-called Contractor was nowhere in the picture. On 02-06-2006 he was orally denied employment by the Respondent for no reason assigned without notice or notice pay or compensation before termination. He had worked for more than 240 days in a period of 12 calendar months. Termination amounts to retrenchment. There is no compliance of Section 25F of the I.D. Act. Termination is void, abinitio. His counterpart workmen, juniors to him are still working as Office Assistant. His termination is also in violation of Section 25G and Section 25H of ID Act. He had rendered about 10 years of continuous service. He having worked directly and continuously, now cannot be termed

to be a contract employee to deny his legitimate benefits. Respondent cannot create record contrary to reality just to deny benefits to him. The workman is to be reinstated with back wages, continuity of service and all attendant benefits.

4. Counter statement averments briefly read as follows :

IA filed challenging maintainability may be heard. The workman, referred to as Petitioner is not with clean hands. He suppressed the fact that he was an employee of Day-n-Day Services (P) Ltd. whom he made a party to the conciliation proceedings but excluded as a party in the ID where Day-n-Day Services (P) Ltd. produced evidence that the petitioner is its employee and that Day-n-Day Services (P) Ltd. did not terminate his services but he was stopping to attend the work there. ID is not maintainable for want of cause of action and misjoinder and non-joinder of necessary parties. The ID is only sham with ulterior motive of the petitioner. There never existed employer-employee relationship interse. Petitioner is not a workman under Respondent. He has never been on the payroll of the Respondent. On 15-04-2005 Respondent entered into an agreement with Day-n-Day Company for providing services of supplying skilled and unskilled personnel. Petitioner is understood to fall under the Office Peon category provided by Day-n-Day. Respondent's designated official liaises with the Manager/Director of Day-n-Day who would give instructions to a person in the category of Executive Assistant or Office Peon to direct, supervise and instruct the other Office Peons at the Airport. Merely by providing a letter on the letter head of the petitioner allegedly stating that he is a employee for the purpose of obtaining Airport passes form the Airport authority would not bring or establish employer-employee relationship. It is for the petitioner to prove as employee under Respondent producing salary certificate, etc. interse his two versions one before the Assistant Commissioner of Labour (Central) that he was appointed in November 1994 and that in the Claim statement that he was appointed on 01-04-1996, there is material contradiction. Statutory forms filed by the Day-n-Day including Form-6-Return of Contributions filed with ESIC, Form-23-Annual Statement of Accounts under the EPFS 1952, etc. establish that he was employee of Day-n-Day Services (P) Ltd. He was not being deputed to Airport since 03-06-2006. Respondent did not feel it necessary to check why he was not being deputed, especially when Day-n-Day continued to provide the agreed manpower. Respondent understood petitioner having stopped work with Day-n-Day. He is making a mockery of protection of labour statute. The ID is to be dismissed. Petitioner raised claim against Respondent because claim against his actual employer Day-n-Day may not secure his future. If petitioner were termed to be contract employee against any otherwise truth he ought to have raised dispute then and there. The said allegation is an afterthought and concocted story. Before conciliation Respondent orally represented that petitioner is not an employee under it. Claim statement only gives an illusion of a cause of action. ID is to be dismissed.

5. Reply statements in a nutshell are as follows :

The IA was filed vexaciously to divert the dispute and drag on the proceedings. In a valid reference made and becoming final there cannot be piecemeal adjudication of the dispute. Request for preliminary issue decision has to be rejected. Appointment Order of the workman would show that he is an employee of the Respondent and is a workman. Attendance Register etc. woutd clinchingly show the above. After directing to engage him Respondent with an ulterior motive from 2005 onwards termed him to be contract employee. Thereafter also he worked only with the Respondent and was paid by it. There is no misjoinder or non-joinder of necessary parties. In the conciliation Respondent or Contractor did not file any reply or attend the proceedings. The workman was appointed on a monthly salary basis as Traffic Assistant. Respondent failed to cover him under ESI and PF Acts. Respondent appears to have created record as if he was a contract employee. It is Respondent making a mockery of proceedings before this Tribunal. Reference has to be answered after adjudication. Reference is maintainable.

6. **Points for consideration are :**

(i) Whether the action of the Management of British Airways in dismissing Sri S. Babu from service w.e.f. 02-06-2006 is legal and justified?

(ii) To what relief the concerned workman is entitled?

7. The evidence consists of oral evidence of WW1 and Ex.W1 to Ex.W15 on the petitioner's side and the oral evidence of MW1 and MW2 and Ex. M1 to Ex. M9 on the Respondent's side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents and evidence. Both sides keenly argued in terms of their respective contentions in the pleadings referring to documents. On behalf of the petitioner reliance was placed on the different rulings of the Apex Court in:

—BHILWARA DUGDH UTPADAK SAHAKARIS LTD. VS. VINOD KUMAR SHARMA (DEAD) BY LRS AND OTHERS IN CIVIL APPEAL NO. 2885 OF 2006 wherein it held "In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end".

—THE WORKMAN OF THE FOOD COROPORATION OF INDIA VS. MIS FOOD CORPORATION

OF INDIA (1985-2-LLJ-4) wherein it is held "When workmen working under an employer are told that they have ceased to be the workmen of that employer, and have become workmen of another employer namely, the contractor in this case, in legal parlance such a act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well-established legal position, the effect of the employment by the second employer is wholly irrelevant. No attempt was made to justify the termination of service of the afore-mentioned workers of the Corporation by the subtle device of introducing a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor. If what was intended to be done was retrenchment, ex facie the action is contrary to the provisions of S. 25F of the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and ab initio void and such action would not alter, change or have any effect on the status of the afore-mentioned 464 workmen who had become the workmen of the Corporation".

—THE JUDGMENT DATED 28-06-2012 OF THE HON'BLE HIGH COURT OF MADRAS IN WP NO. 9045 OF 2008 AND MP NO.1 OF 2008 (P. JAYAPAUL VS. PRESIDING OFFICE, CGIT-CUM-LABOUR COURT, CHENNAI-6) (ii) THE DISTRICT MANAGER, FOOD CORPORATION OF INDIA, COIMBATORE wherein it was observed "30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the raison d' etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some of the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employer for years together and that micro wages earned by him may be the only source of his livelihood".

9. Ex.W1-Appointment Letter dated 01-04-1996 described as Contract for Employment tends to show that the workman is only an employee of the Respondent. Ex.W2 and Ex.W3 dated 28-03-1998 and 23-12-2002 respectively letters issued by the Respondent for giving gate pass to the workman also tend to show the workman's employment directly under the Respondent. Ex.W3 letter is one really issued by the Dy. General Manager of the Respondent which shows the workman to be a bonafide employee under Respondent. Ex.W4-Temporary Pass issued to the workman further corroborates that he is working under the Respondent. Ex.W5 to Ex.W14-Copies of extracts of Attendance Register from the year 1996 to 2005 show the continuity in service of the employment of workman. Ex.W15 is the salary slip of the Workman, all cumulatively leading to the conclusion that he is only a direct employee under the Respondent. There is no challenge against the genuineness of Ex.W1 or other material documents. When the genuineness of the documents remains unchallenged that is to say they receive acceptance, no amount of oral evidence can be allowed to be let in to vary from the terms of such documents. Before the conciliation admittedly the Respondent did not file any written counter except allegedly an oral objection, but not proved to be given, which is the first stage of the proceeding on the raising of the industrial dispute. By not examining Ajit Mathew, signatory to the Ex.W1 the authenticity of Ex. W1 is not in challenge. MW1-Airport Manager virtually admits Ex.W1 and Ex.W2. He appears to be not in know of very very pertinent aspects of the issue. He does not appear to challenge the veracity of the documents produced on behalf of the petitioner. The earliest of the document relied on behalf of the Respondent is Ex. M1 dated 30-06-2005 the antiquity of which is not as far as back as the year 1996 from which the service of the workman commenced as a Traffic Assistant on appointment under Ex.W1. Ex.M1 is from the year 2005. Ex. M9 is the Agreement between Day-n-Day Services (P) Ltd. and the Respondent under which the former undertakes to provide manpower supply to the Respondent. All these materials coupled with the testimony of WW1 would show that his employment under the Respondent right from the year 1996 is true. The evidence of MW2 only advances an episode from 2005 with the introduction of Ex.M9 under which the agreement between Day-n-Day Services and the Respondent has been given rise to, for supply of manpower to the Respondent. The evidence of both MW1 and MW2, witnesses examined on the side of the Respondent is of no avail to rebut the

case of the petitioner or to prove its own case in answer to the claim of the workman. The nature of contention of the Respondent indicates that the workman after having been directly engaged under it right from 1996 as a Traffic Assistant later it chose to terminate him w.e.f. 02-06-2006 in violation of Section-25F of the I.D. Act rendering the termination a retrenchment which is ipso facto void. Thereafter as and could be gathered from the evidence adduced by the petitioner the contention adopted by the Respondent and nature thereof that the Management was out to treat the employee, a contract employee under the Day-n-Day Services which is without compliance of the requirements of the mandate of Section-9A of the ID Act is brought to home. The said conversion when discernibly was brought about by means of Ex.M9. Agreement has the effect of nullifying the agreement itself without any probative value attached to it. Therefore Ex.M9 document is rendered void with no legal effect. The conversion of the status of the employee from that of direct employment to that of contract labour i.e. indirect employment under the Respondent while is a change of the conditions of employment without compliance of Section-9A of the I.D. Act the said change is also rendered void. While Ex.W1 to Ex.W3 could be found to clinch the issue in favour of the workman, which is also not denied by MW1 except to the extent that they are only xerox copies, still they are not to be rejected in their substratum. It is especially so when the originals are reckoningly with the Respondent only. These documents on the face of the them establish to be true copies of the originals which are genuine. In order to rebut the case of the workman Mr. Ajit Mathew, Manager (Passenger Services) who issued Ex.W1 has not been examined. That the workman had been continuously working since 1996 does not stand disputed. To substantiate the case of the Management that the employee has been only contract employee no reliable oral or documentary evidence is forthcoming from the side of the Respondent. When Ex.M1 to Ex.M3 take date from the year 2005 only they are seldom apt to rebut a case of genuine employment of the workman directly under the Respondent commencing with Ex.W1 from 01-04-1996. The evidence of MW2 is also not worthy to rebut any of the claim advanced on behalf of the petitioner right from 01-04-1996 and prior to the execution of Ex.M9-Agreement dated 15-04-2005. In the temporary passes the office of the workman is shown as British Airways only. MW2 has no case of the workman being a contract employee under him prior to execution of Ex.M9. Still MW2 could be seen to be stoutly denying that petitioner was directly working under British Airways. It appears to be an instance like that of a person who becomes more royal than the King. When comprehensively and as alleged the contractual relationship between the workman and MW2 commenced with Ex.M9 only dated 15-04-2005 it is strange to note how could he stoutly deny any prior engagement between the Respondent and the employee directly whatever may be the status, capacity or nature of such engagement.

10. Whatever materials, the Respondent relies upon to negate the case of the workman, are dating from the year 2005 alone. They are not documents, efficacious enough to meet the case of the workman which gains prominence from the factum of his employment directly under the Respondent w.e.f. 01-04-1996 through Ex.W1. The said case of the petitioner's employment standing proved eloquently on his part and at the same being not shaken in its veracity, therefore holds to be eminently true. Discernibly the said appointment continued until there came to an end of his engagement with his termination from 02-06-2006 by way of oral denial of employment by the Respondent without assigning any reason and without compliance of Section-25F of the I.D. Act. The allegation in the claim petition that he had worked for more than 240 days in a period of 12 calendar months does not stand traversed by the Respondent in the Counter Statement. Hence even though the present status of the workman but for his admitted absence from employment, is as a contract labour under Day-n-Day Services (P) Ltd. that status and nature of his employment has had life only on and after 03-06-2006 and not before that point of time during which period he had only been a direct employee under the Respondent. In view of all these factual considerations I am to hold that the employee had been directly employed under the Respondent and he was being terminated from service without complying with the provisions of Section-25F. This was brought about by conversion of his status as a contract employee by treating him as such by a change of his status-quo ante without notice under Section-9A of the ID Act, which renders the change perse, void ab initio. So much so, for all reasons the workman is entitled to be reinstated into service forthwith with continuity of service and all attendant benefits including full back wages from the date of termination.

11. Resultantly I.A No. 72/2009 filed by the Respondent praying for deciding on the maintainability of the industrial dispute as a Preliminary Issue but which stood posted for decision alongwith the main issue in the ID stands dismissed.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th July, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1 Sri S. Babu
For the 2nd Party/Management : MW1 Sri Hemant Sethi
MW2. Sri Beer Mohideen

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	01-04-1996	Order of Appointment
Ex.W2	28-03-1998	Letter issued by the Respondent
Ex.W3	23-12-2002	Letter issued by the Respondent
Ex.W4		Temporary pass
Ex.W5	1996	Attendance Register
Ex.W6	1997	Attendance Register
Ex.W7	1998	Attendance Register
Ex.W8	1999	Attendance Register
Ex.W9	2000	Attendance Register
Ex.W10	2001	Attendance Register
Ex.W11	2002	Attendance Register
Ex.W12	2003	Attendance Register
Ex.W13	2004	Attendance Register
Ex.W14	2005	Attendance Register
Ex.W15	-	Salary slip of the petitioner

On the Mamagement's side

Ex. No.	Date	Description
Ex.M1	30-06-2005	Copy of Airport Entry Pass Application form
Ex.M2	18-05-2007	Copy of the letter from the Chief Labour Commissioner
Ex.M3	13-06-2007	Copy of the letter from the Chief Labour Commissioner
Ex.M4	-	Copy of Form-23 with respect to payment of -Provident Fund contribution for Mr. Babu by Day "N" Day Service (P) Ltd.
Ex.M5	-	Copy of the Form 5 provided by Day "N" Day Service (P) Ltd. to the Office of the Provident Fund with respect to the details of Mr. Babu for making the PF contributions.
Ex.M6	26-09-2006	Copy of From-6 with respect to payment of contribution for Mr. Babu by Day "N" Day Services (P) Ltd.
Ex M7	10-06-2006	Copy of the letter showing surrendering Mr. Babu's Airport Pass by Day "N" Day Services (P) Ltd. L.'
Ex.M8	-	Copy of Mr. Babu's Airport Pass surrendered by Day "N" Day Services (P) Ltd.
Ex.M9	15-04-2005	Agreement between Day "N" Day Services (P) Ltd. and British Airways.

नई दिल्ली, 27 अगस्त, 2012

का.आ. 2892.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अक्तूबर, 2012 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध पंजाब राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :–

क्रम सं	राजस्व ग्राम का नाम	हदबस्त सं.	तहसील	जिला
1.	जिओली	184	डेराबस्सी	मोहाली
2.	सितारपुर	154	डेराबस्सी	मोहाली
3.	जस्थाना खुर्द	221	डेराबस्सी	मोहाली
4.	बसोली	164	डेराबस्सी	मोहाली

[सं. एस-38013/29/2012-एस.एस.-I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 27th August, 2012

S.O. 2892.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2012 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Punjab namely :—

Sr. No.	Name of the Revenue Village	Hadbast No.	Tehsil	District
1.	Jeoli	184	Derabassi	Mohali
2.	Sitarpur	154	Derabassi	Mohali
3.	Jasthana Khurd	221	Derabassi	Mohali
4.	Basoli	164	Derabassi	Mohali

[No. S-38013/29/2012-S.S.-I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 30 अगस्त, 2012

का.आ. 2893.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित

धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा मैसर्स भारतीय हस्तशिल्प एवं हथकरघा निर्यात निगम लिमिटेड (सभी इकाइयां) के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है । यह छूट, अधिसूचना के जारी किए जाने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी ।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है, अर्थात् :–

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे ;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं ;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे ;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थी ;

(5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी ;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्ही उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :–

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं ; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्त्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनियोजन/विनिवेशीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब यह प्रतिष्ठान को छूट हेतु अनुमति सरकार की अनुमति लेनी होगी ।

[सं. एस-38014/13/2011-एस.एस.-I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 30th August, 2012

S.O. 2893.—In exercise of the powers conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of M/s. Handicrafts & Handlooms Export Corporation of India Ltd. (All Units) from the operation of the said Act. The exemption shall be effective from the date of issue of this Notification for a period of one year.

2. The above exemption is subject to the following conditions namely:—

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid

prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under sub-section(1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of Section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such, provisions were in force in relation to the said factory to be empowered to,:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/13/2011-S.S.-I]
NARESH JAISWAL, Under Secy.

नई दिल्ली, 4 सितम्बर, 2012

का. आ. 2894.—केन्द्रीय सरकार संतुष्ट हो, जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi)के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ. दिनांक 14-3-2012 द्वारा नाभिकीय ईंधन, संघटक, भारी पानी और सबंधं रसायन तथा आणविक उर्जा, जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 28 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 14-3-2012 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था ;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 14-9-2012 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[सं. एस-11017/3/97-आई आर (पी.एल.)]
चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 4th September, 2012

S. O. 2894.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour and Employment, dated 14-3-2012 the service in the Industrial Establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy which is covered by item 28 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 14th March, 2012.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 14th September, 2012.

[No. S-11017/3/97-IR (PL)]

CHANDRA PRAKASH, Jt. Secy.

नई दिल्ली, 4 सितम्बर, 2012

का.आ. 2895.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा अनुसूची में विनिर्दिष्ट कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है । यह छूट, अधिसूचना के जारी किए जाने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी ।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है, अर्थात् :–

(1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित है, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे ;

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं ;

(3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे ;

(4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं ;

(5) निगम द्वारा उक्त कर्मचारी राजय बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी ;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्ही उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :–

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं ; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्त्ता या सेवक की, या ऐसे व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी ।

अनुसूची

क्रम संख्या	स्थापना/कारखाने का नाम
1.	मैमर्स दुर्गापुर स्टील प्लांट, दुर्गापुर (पश्चिम बंगाल)
2.	सेल का मैमर्स इसको स्टील प्लांट, बरनपुर (पश्चिम बंगाल)

[सं. एस-38014/03/2012-एस.एस.-I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 4th September, 2012

S.O. 2895.—In exercise of the powers conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of factories/ establishments specified in the schedule from the operation of the said Act. The exemption shall be effective from the date of issue of this Notification for a period of one year.

2. The above exemption is subject to the following conditions namely:—

(1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of Section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such, provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate-employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

SCHEDULE

Sl. No.	Name of the Establishment/Factory
1.	M/s. Durgapur Steel Plant, Durgapur (West Bengal)
2.	M/s. IISCO Steel Plant of SAIL, Burnpur (West Bengal)

[No. S-38014/03/2012-S.S.-I]
NARESH JAISWAL, Under Secy.

नई दिल्ली, 6 सितम्बर, 2012

का.आ. 2896.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi)के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ. दिनांक 05-3-2012 द्वारा किसी भी तेल क्षेत्र जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 17 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 09-3-2012 से

छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था ;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 09-9-2012 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[सं. एस-11017/10/97-आई आर (पी.एल.)]

चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 6th September, 2012

S. O. 2896.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour and Employment, dated 05-3-2012 the service in the Any Oil Field which is covered by item 17 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 9th March, 2012.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 9th September, 2012.

[No. S-11017/10/97-IR (P.L.)]

CHANDRA PRAKASH, Jt. Secy.

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